

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

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**SPECIAL COMMITTEE TO INVESTIGATE
WHITewater DEVELOPMENT CORPORATION
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FOURTH CONGRESS**

FIRST SESSION

VOLUME VIII

ON

**THE INQUIRY INTO WHETHER ADMINISTRATION
OFFICIALS ENGAGED IN IMPROPER CONDUCT
WITH RESPECT TO INVESTIGATIONS AND INQUIRIES
RELATING TO WHITEWATER DEVELOPMENT
CORPORATION, CAPITAL MANAGEMENT SERVICES,
MADISON GUARANTY SAVINGS & LOAN,
AND RELATED MATTERS**

OCTOBER 17, 18, 19, AND 20, 1995

Printed for the use of the Committee on Banking, Housing, and Urban Affairs



MAR 22 1993

**INVESTIGATION OF WHITEWATER
DEVELOPMENT CORPORATION
AND RELATED MATTERS**

DEPOSITIONS

BEFORE THE

**SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS**

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**DEPOSITION OF DON K. PETTUS
IN RE: S. RES. 120**

TUESDAY, OCTOBER 17, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

Deposition of DON K. PETTUS, called for examination pursuant to notice of deposition, at 11:19 a.m. in Room 640-A of the Hart Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, JR., Esq.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Counsel
RICHARD BEN-VENISTE, Esq.
Chief Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CHARLES J. SGRO, Esq.
Counsel to Deputy Attorney General
U.S. Department of Justice
ANDREA M. SIMONTON, Esq.
Deputy General Counsel
On behalf of the deponent.

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P R O C E E D I N G S

Whereupon,

DON K. PETTUS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Don K. Pettus, P-e-t-t-u-s.

Q And your present business address.

A 1230 West Fourth Street, Little Rock, Arkansas.

Q And are you still with the FBI?

A No, I retired at the end of last year. I am now in private industry.

Q What is the name of your employer?

A Regional manager for Guardsmark, Incorporated.

Q How do you spell that?

4

A G-u-a-r-d-s-m-a-r-k.

Q Now, how long have you been employed at Guardsmark?

A Since January, January 2.

Q Of '95; correct?

A That's correct.

Q Prior to January 2, 1995 where were you employed?

A November 11, I retired from the FBI, of '94.

Q When you retired from the FBI, what was your position?

A I was the agent in charge of the Kansas City office.

Q And how long had you been agent in charge of the Kansas City office?

A Almost two years. Basically, I took over January 1 of '93.

Q And prior to taking over as agent in charge of the Kansas City office on January 1 '93, what were you doing with the FBI?

A From January 1 '86 to the end of '92, I was

1 agent in charge in Little Rock.

2 Q Now, Mr. Pettus, this deposition is
3 conducted pursuant to Senate Resolution 120. The
4 resolution establishes a Special Committee
5 administered by the Banking committee to conduct an
6 investigation involving Whitewater Development
7 Corporation, Madison Guaranty Savings and Loan
8 Association, Capital Management Services, Inc., the
9 Arkansas Development Finance Authority and other
10 related matters.

11 Section 1(b)2(c) of Senate Resolution 120
12 authorizes investigation and public hearings into
13 whether the Department of Justice has improperly
14 handled RTC criminal referrals relating to Madison
15 Guaranty Savings and Loan Association or Whitewater
16 Development Corporation. This will be the focus of
17 today's deposition.

18 A Yes, sir.

19 Q You were requested to testify on October 5,
20 1995. This deposition is being taken in advance of a
21 public hearing likely to be held in late October or
22 November. It is possible that you may testify at

1 that hearing.

2 We will be asking you a series of
3 questions. You are testifying of course under oath.
4 If you don't understand a question, let us know and
5 we will rephrase it. If you need a break, please let
6 us know.

7 The stenographer will prepare a record of
8 questions and answers. The deposition will be
9 treated as committee confidential until the
10 commencement of the hearings. Prior to the hearings,
11 you will receive a letter from the committee telling
12 you that you may come to the Senate to review the
13 transcript of your deposition and make note of any
14 corrections of transcription on an errata sheet.

15 If you are called to testify at public
16 hearing, you will be permitted to have a copy of your
17 deposition transcript four days in advance of your
18 testimony. You may be represented by counsel.

19 Objections to the form of questions will be
20 noted for the record. Counsel may object on grounds
21 of privilege or relevance. The committee chairman
22 may rule on objections where the witness refuses to

1 answer a question.

2 Now, are you aware of the committee's
3 document request to the Department of Justice dated
4 August 25, 1995 with respect to the matters I have
5 just recited?

6 A Yes, basically.

7 Q And as a result of that request, did that
8 cause you to search your records to determine whether
9 or not you had any documents that would be responsive
10 to that request?

11 A Yes.

12 Q Have you provided all those documents that
13 you thought were responsive to that request to the
14 Department of Justice?

15 A I believe so.

16 Q Or the FBI?

17 A Yes, I believe so.

18 Q Did you speak to anyone other than counsel
19 prior to your deposition here today with respect to
20 the substance of your testimony?

21 A Only to Andrea. I went to the FBI
22 headquarters.

1 Q Now, going back for a moment to that point
2 in time when you left your position as head of the
3 Little Rock office, who succeeded you in January of
4 18993?

5 A Robert Satkowski.

6 Q Robert Satkowski. Do you know how long he
7 was the agent in charge there?

8 A He just retired -- do you know the date? --
9 within the last four months, three or four months.

10 Q So he retired as the agent in charge in
11 Little Rock?

12 A Right. Within the last three months, I'd
13 say.

14 MR. SGRO: I would --

15 MS. SIMONTON: I would say, and I'm not
16 under oath, but just for information's purposes, I
17 think it was certainly within the last three months.
18 It was in the summer, I would say, of 1995.

19 BY MR. GICALE:

20 Q At least throughout '93, '94 and part of
21 1995?

22 A Exactly, yes, precisely.

1 Q Now, in terms of your office in Little
2 Rock, can you briefly describe the structure of the
3 office in terms of who you supervised, and
4 specifically, I would like to reference Mr. Irons and
5 the agents that may have been supervisors either
6 beneath him or above him, between you and Mr. Irons.

7 MR. KRAVITZ: Do you have a particular time
8 period in mind?

9 BY MR. GICALE:

10 Q This would have been between September --
11 September 1992 and January 1993.

12 A Well, we had approximately 100 employees
13 total, and the Little Rock office covers the state.
14 And I believe there was seven or eight what we call
15 resident agencies, so basically, they're smaller and
16 without any support complement and handle basically
17 everything in their area unless it's an extremely
18 complicated case.

19 There was one supervisor in Fort Smith who
20 handled basically the Western District.

21 Now, as far as white-collar crime matters,
22 Irons was the supervisor and would coordinate the

10

1 program for the state. In other words, Bounds, Bill
2 Bounds, who was a supervisor in Fort Smith, would
3 work through Irons. He was a supervisor. I don't
4 recall exactly how many he had on the squad. He
5 reported through Don Whitehead, who was the assistant
6 agent in charge, and then I was the agent in charge.

7 Q Don Whitehead?

8 A Right.

9 Q Now, did Irons have to coordinate any of
10 his work with anyone in Washington?

11 A He would have discussions with basically
12 his counterpart in Washington, who would be the
13 supervisor here at whatever desk it might be at
14 headquarters.

15 Q Now, who was Jane Erickson, if you know?

16 MS. SIMONTON: If you want me to tell you
17 who that is, I'd be happy to.

18 THE WITNESS: I don't know. I'm not sure
19 what her title was. Can you refresh my memory?

20 BY MR. GICALE:

21 Q Well, if you know -- if you knew who she
22 was, and I take it you don't.

1 A I knew Kendrick was basically his
2 counterpart here at headquarters.

3 Q Now, in terms of day-to-day supervision of
4 Irons, would you have day-to-day supervision of Irons
5 or would it be Don Whitehead?

6 A I would have the ultimate responsibility,
7 but I would say as far as detail and being in regular
8 daily contact with him, Mr. Whitehead would be, but I
9 guess it depends. I would have --

10 Q Would it depend on the issue?

11 A The policy and issue, right. It would
12 basically depend on the issue.

13 Q Well, then let's get to the issue. When
14 did you first hear of an RTC criminal referral
15 relating to Madison Guaranty or Whitewater
16 Development Corporation?

17 A You're talking strictly about a referral,
18 not the first trial on the case?

19 Q No, the referral.

20 A The referral, okay. That would have been
21 near the end of August, I believe, August 26 is what
22 it was.

12

1 Q Of which year?

2 A Of '92.

3 Q Do you recall how you found out about that
4 referral?

5 A I wouldn't say specifically but I'm fairly
6 positive that Irons told me, probably accompanied by
7 ASAC, but I'm sure Irons told me.

8 Q Do you recall -- that's when you first
9 heard about the referral or you received the
10 referral?

11 A Well, no, there had been some discussions.
12 We had had -- of course, basically, we didn't open a
13 case or look at a case until we got a referral from
14 the RTC, so he primarily would have been in regular
15 contact with his counterpart from the RTC. So we
16 knew -- we were hoping that there was some referrals
17 coming. There were a couple other cases of major
18 significance, Savers and I believe the other one was
19 First Federal.

20 So I think what happened was that in a
21 conversation with someone from the RTC, they had
22 indicated that Madison Guaranty would be

1 forthcoming. Now, that might not have been August 22
2 exactly but I would say on -- it is in that period,
3 August 26.

4 Q Do you know approximately when you received
5 the criminal referral from the RTC?

6 A I believe after Labor Day or right around
7 Labor Day, so roughly September 1 or 2 or right in
8 that period.

9 Q Now, do you know what if any action was
10 taken with respect to the referral at that point in
11 time?

12 A Well, on the -- when he first heard the
13 referral was coming in, he sent an Airtel, to
14 headquarters. We call that -- it's not our highest
15 priority communication but a priority communication.
16 A memorandum would just go regular. Airtel is
17 handled with a little more priority. We'll get into
18 teletypes later. Of course, that goes right on out.

19 Q Now, I'm going to show you what's marked
20 for identification as FBI 00001529. It's a document
21 dated 8-26-92. It's labeled to the director from the
22 SAC Little Rock regarding financial institution

1 fraud, and I ask you if this is the Airtel document
2 that you're referring to.

3 A That's it. That's it.

4 Q And that's the document that was alerting
5 headquarters --

6 A Right.

7 Q -- to the possibility of receiving this
8 referral?

9 A Right.

10 Q I'm also going to show you what's marked
11 for identification as FBI 00000997. This is an
12 undated document, page 3 of a document, it's labeled
13 as a communication message form. Can you identify
14 what this is for us?

15 MR. KRAVITZ: Do you have the first two
16 pages of that?

17 MR. GICALE: I don't. And I looked for it
18 in our documents, and I did not see it.

19 MR. KRAVITZ: I've seen that before,
20 attached to something else. I'm not sure exactly
21 what it was. I'm sure it's in my pile somewhere.

22 MR. GICALE: Well, off the record.

1 (Discussion off the record.)

2 BY MR. GICALE:

3 Q I previously identified the number on this
4 document, and I don't think I need to go through the
5 zeros again. Can you identify this document which is
6 labeled as page 3? If you can't, there may be
7 another document that can be of assistance.

8 A Based on my knowledge, I believe this is a
9 note that was made up at headquarters and Little Rock
10 probably didn't get it at that time. This looks to
11 me like a headquarters note. Verinder, Kubic and
12 Dick are all at headquarters. Copy designations are
13 all to headquarters people. From my experience, this
14 is a note made up at headquarters and Little Rock
15 probably didn't get it right away.

16 Q This is with reference to this case?

17 A Right.

18 Q And receipt of the referral; correct?

19 A That's correct.

20 Q Do you recall seeing this eventually?

21 A I had seen it in the documents that I've
22 reviewed, but at that time, I'm fairly certain I

1 didn't see it because that would have been a -- that
2 would have stayed at headquarters.

3 Q Now I'm going to show you what's marked for
4 identification as document 006695. Can you identify
5 that for us?

6 MR. KRAVITZ: Lou, just so the record is
7 completely accurate, am I correct that you've handed
8 the witness more than just one page?

9 MR. GICALE: Yes, yes. I'm sorry.

10 BY MR. GICALE:

11 Q The document with the first Bates number
12 006695 through 006714 is labeled a criminal referral
13 form. Is this the criminal referral form that you
14 received in September of 1992?

15 A I believe that's it, on Madison Guaranty.
16 There's no -- I don't see a date here, but I believe
17 that that's the type of referral form they typically
18 use.

19 Q Well, if I could quickly direct your
20 attention to the last page, 0005 -- I'm sorry.
21 006714, does that indicate a date?

22 A Yes, there's two 8-31s and a '92.

1 Richard A. Iorio, 9-1-92.

2 Q When it referral came into your office, how
3 was it handled?

4 A It would go to Mr. Irons for total review
5 and for appropriate handling.

6 Q Now, did he give a copy of this to you to
7 review as well?

8 A I don't recall exactly. I know he told me
9 about it and summarized it and that type of thing.
10 Whether he actually physically handed me a copy, I
11 don't recall, but I was aware of it and that it came
12 in.

13 Q He briefed you on it, then?

14 A Right, precisely. And I imagine
15 Mr. Whitehead would have been in on that. I can't
16 recall exactly, but that would have been typical.

17 Q Now I'm going to show you what is marked
18 for identification as KDK 0000006, six zeros and a 6,
19 a letter to Steve Irons dated September 1, 1992
20 regarding this criminal referral. Do you recall
21 seeing this letter?

22 A Again, I was aware that it came in.

1 Whether I actually personally saw it, I don't know,
2 but I'm sure I was briefed on it.

3 Q In the lower left-hand portion of that
4 exhibit --

5 A "Copy given to SAC."

6 Q Do you know whose handwriting that was?

7 A DW, that's probably Don Whitehead. That
8 looks like DW, which would be Don Whitehead.

9 Q And when he says -- when it says "copy
10 given to SAC," in fact, there's a date there, is it
11 9-10-92?

12 A Right. 9 -- it's 9-92. I'm not sure what
13 the middle one is. 9-10? I'm not sure what that is.

14 Q And when it indicates "copy given to SAC,"
15 9, whatever the date is, '92, does that mean that you
16 received a copy of the letter and the referral or
17 just were notified of it?

18 A It could have been either.

19 MS. SIMONTON: Just as a point of
20 clarification, in referring to the documents that
21 were turned over, the FBI got documents from several
22 sources. Those sources were individually numbered,

1 KDK standing for Kevin D. Kendrick, but our
2 sequential numbering we numbered starting from, like,
3 1 to whatever with the FBI number, so it might be
4 easier in terms of finding documents later on if we
5 refer to the FBI number as opposed to the working
6 file number.

7 MR. GICALE: That's correct. Where I can
8 do that, I will. And now that you mention that, with
9 respect to this one, the FBI number, and let's -- the
10 document we just discussed dated September 1, 1992,
11 the FBI number was 00000964, so there's no question
12 about that.

13 MS. SIMONTON: We would agree to the
14 elimination of the predecessor zeros for ease.

15 MR. GICALE: Good. Thank you.
16 (Laughter.)

17 MR. KRAVITZ: They must be planning on
18 sending us a lot of documents.

19 MS. SIMONTON: If you get the volumes that
20 the independent counsel has or returns to us --

21 MR. GICALE: Off the record, I assume?

22 MS. SIMONTON: The last part, yeah, it is.

20

1 BY MR. GICALE:

2 Q Now, with respect to this referral, can you
3 tell us what, if any, action your office took with
4 respect to this referral in early September?

5 A I think by way of background -- I've kind
6 of got to give you a little more information. By way
7 of background, there had been an extensive
8 investigation of Madison Guaranty. It was one of the
9 first cases that we took to trial on the failed
10 savings and loan.

11 Q When was that?

12 A It was a rather lengthy trial. I want to
13 say almost two weeks, which resulted in an acquittal
14 of Mr. McDougal, who was the main target.

15 Q What year was that?

16 A I'd have to refresh my memory. I want to
17 say '89, but I'd have to double-check, but this is
18 the background. We had done a very extensive
19 investigation. I believe one person perhaps pled
20 guilty, maybe two, there might have been a directed
21 verdict on one individual, but the crucial element in
22 pursuing it further with additional information is we

1 had a very detailed investigation. We went to a very
2 lengthy trial and the main target was acquitted, so
3 that leads us up to getting this inquiry.

4 Now, with that background, certainly before
5 we go forward, we want to be very careful at this
6 time that we have sufficient indicators to warrant
7 what we're doing. And in this referral, although we
8 got the basic summary, 300 attached documents -- I
9 believe there were about 300 -- went to the U.S.
10 Attorney's office.

11 So Irons had a number of concerns. One was
12 that if he was the one who prosecuted or his office,
13 that if we're going to do whatever type of
14 investigation, limited or otherwise, we want to make
15 sure that the U.S. Attorney is totally on track and
16 that we have totally independent indicators that
17 would warrant additional investigation.

18 So with that in mind, my first concern --
19 also we were aware of the witnesses that were
20 mentioned in this report and if --

21 Q Which witnesses are you referring to?

22 A The presidential candidate and his wife,

22

1 and I believe Tucker was mentioned. So we were also
2 concerned about the witnesses, doing something that
3 we didn't have total and absolute justification at
4 this particular time period.

5 Q So what steps did you take, then?

6 A I probably had some kind of oral
7 conversation with the U.S. Attorney prior to that
8 time but --

9 Q That was Mr. Banks?

10 A Right, right. But I know on, I believe it
11 was around September 20 or 23, we had an actual
12 meeting in Mr. Banks's office. And we also had
13 informal assessments from Irons and his staff as to
14 was there new and additional information here that
15 would probably warrant opening up some type of an
16 investigation. And again we've got to keep in mind,
17 we don't have the 300 documents.

18 Q You did not have that initially?

19 A No, we did not have those. They sent those
20 only to the U.S. Attorney's office, so based on a
21 very limited, preliminary review, we were just trying
22 to make absolutely certain that we were objective and

1 fair and that we had adequate indicators to move
2 forward and act on the referral, and also that the
3 U.S. Attorney's office was totally on track and
4 consistent with what we were going to do. And we
5 did -- to follow up, I believe it was the 23rd we had
6 a meeting in the U.S. Attorney's office.

7 Q Who attended that meeting?

8 A Certainly the U.S. Attorney. Irons, I
9 believe Gretchen Hall was there, I'm not sure.

10 Q She's one of your agents?

11 A She is an analyst who eventually did the
12 review, the one who did the review. And I believe
13 there was somebody else there from his office. I
14 don't know whether it was Dodson or who it was, but I
15 know there was someone else from his office, perhaps
16 two.

17 Q And how long did that meeting last?

18 A I don't know. I just have to refresh my
19 memory. It was a fairly detailed meeting, discussion
20 of the issues, the ramifications, fact that we had
21 had the prior trial. We went into the emotional
22 state of McDougal, the new factors, what additional

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1 new facts had been brought up by this and I think the
2 general consensus was that at that point there hadn't
3 been a whole lot of new indicators or information
4 which would warrant a full investigation.

5 Q Now, did you at that point review the 300
6 exhibits or discuss those exhibits at that point?

7 A No, no, no. I'm sure they were alluded
8 to. Now, as far as an extensive discussion, I don't
9 know. I'm sure they were alluded to. I'm not sure
10 how much of a review they had had. I don't recall
11 that, but we're leading up --

12 Q And so as a result of that meeting, what
13 decision was made with respect to how this
14 investigation -- an investigation, if any, would
15 proceed?

16 A As things developed, we initially --
17 eventually had I believe it was Gretchen, Steve Irons
18 and someone from his office review the material.

19 Q Someone from whose office?

20 A Mr. Banks's office.

21 Q That was agreed to at this 9-23 meeting?

22 A I'm not sure when that was agreed to. I'm

1 not sure. The 9-23 -- I'm not sure when we agreed to
2 that, but eventually we decided, there was an
3 agreement that there would be a review of the
4 additional facts.

5 Q Just to back up for a second, as a result
6 of the 9-23-92 meeting, were there any decisions made
7 in terms of where this would go?

8 A Well, there was a preliminary decision that
9 basically he had some problems with statute of
10 limitations, as I recall, McDougal's status.

11 Q What do you mean his status?

12 A As I recall, he was living in a house
13 trailer, his I guess you'd say his physical status
14 was in some question at that time.

15 Q Physical or mental?

16 A Well, probably mental -- physical and/or
17 mental. And of course the witnesses were discussed
18 and there was -- I think the prevailing opinion was
19 that the new referral -- and I can't say as to where
20 they had looked at the 300 but based on the cover
21 sheet or their official referral, that there were
22 insufficient additional facts in there to warrant

1 certainly a full investigation and even -- it was
2 insufficient.

3 It was discussed, the impact this would
4 have coming in this time period, basically two months
5 before the election, that we wanted to be fair and
6 objective and I think we were both pretty much on
7 track there, that but for the trial and the
8 acquittal, it might have been a different situation,
9 but with a full-fledged trial and full-fledged
10 investigation and the acquittal, we had to be very
11 careful here.

12 And probably that if we did any type of
13 investigation, it would be perceived as an
14 investigation of the witnesses and we just had to be
15 fair and objective to all the parties involved, in
16 light particularly of the acquittal and the trial.

17 Q So after discussing all of these issues,
18 was there any decision made as to what would be done
19 next or whether there would be a follow-up
20 conversation with respect to --

21 A There would obviously be some follow-up
22 contact with Irons and his counterpart in the U.S.

1 Attorney's office, and I'm fairly certain that at
2 that point they -- I don't believe they had reviewed
3 completely the 300 pages, I'm certain they hadn't,
4 because that does come a little later.

5 Q So was there some understanding that these
6 documents -- you had to be careful but that these
7 documents would have to be reviewed and you'd have
8 some further discussions; is that correct?

9 A Right, and he had some concern about --

10 Q Is that correct?

11 A Yes, sir.

12 Q And he had some what?

13 A There was some concern, and I don't recall
14 the specifics on that, to statutes, statute of
15 limitations or statutes.

16 Q Now, do you know at that meeting whether
17 anyone in the meeting, any of the parties, the agents
18 or anybody in the U.S. Attorney's office, indicated
19 whether they knew any of the parties, either the
20 individuals named as potential defendants or
21 potential witness in the case?

22 A Well, certainly in that small of state, we

1 knew of them, certainly. Mr. Banks would have. I
2 think all the parties in there would certainly have
3 known who they were.

4 Q I understand, knowing of them, but anybody
5 that had any personal relationships with them.

6 A What do you mean a personal relationship?
7 I mean --

8 Q Well, knew them, I mean --

9 A Well, I think by virtue of our positions,
10 we would come in contact with them. I did.

11 Q With the governor?

12 A I'm certainly -- very limited but at
13 official functions and that type of thing, I had seen
14 the governor. You'd have to ask Banks but I'm sure
15 he would have, too.

16 Q For instance, your contacts, would that
17 have been limited to business functions?

18 A My official capacity, as I -- as SSAC,
19 where we would be present at a function where we were
20 both there.

21 Q That would be the then-Governor Clinton?

22 A Right, right, right.

1 Q What about the other parties that were
2 named as witnesses, potential witnesses?

3 A Tucker, I don't -- he was lieutenant
4 governor, I believe, at that time. I don't think I
5 had ever met Tucker. I could have. I don't know. I
6 mean that's a small state and a small city. I may
7 have been at a function where I had run into him, or
8 not. Chuck, I don't know. Mr. Banks, I don't know.

9 Q In any event, was that -- if anyone had a
10 personal relationship, not a business relationship,
11 with these people, was it discussed at this meeting?

12 A That was certainly not a factor in our
13 discussions. We were just concerned about fairness
14 and objectivity.

15 Q Now, after this meeting, you've indicated
16 that there were some subsequent discussions or review
17 of documents by members of both of your staffs;
18 correct?

19 A Right, right, right.

20 Q Now, at this time, were there
21 communications with FBI headquarters about your
22 meeting with Mr. Banks and his staff or how you were

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1 going to proceed with respect to this case?

2 A I believe we sent some kind of
3 communication to headquarters, saying there wouldn't
4 be any overt -- any investigation or overt
5 investigation. I don't recall precisely the terms we
6 had but I believe there was communication sent to
7 headquarters telling them that we weren't going to
8 conduct and then why.

9 Q Now, when you talk about communications,
10 I'm going to show you what's marked for
11 identification, excluding the zeros, as 985, which is
12 a facsimile cover sheet. By the way, it's 985
13 through 996. This is a facsimile cover sheet dated
14 October 7, 1992 to FBI headquarters from FBI Little
15 Rock. Can you take a look at that, please.

16 (Witness reviewed the document.)

17 A McDougal is described as a diagnosed manic
18 depressive and psychological state was -- all right.
19 Let me get on here and see.

20 Q In term of the document to begin with,
21 would that be the form of communication that you used
22 to notify FBI headquarters with respect to the status

1 of this investigation on October 7?

2 A This is a teletype, right.

3 Q That's the teletype?

4 A Correct.

5 Q Now, did you have any conversations with
6 the director -- telephone conversations or in-person
7 conversations with the director or any of his
8 immediate staff with respect to this case prior to
9 this particular teletype?

10 A I got a call from Fred Verinder.

11 Q Do you know when that was?

12 A I believe --

13 MS. SIMONTON: Off the record.

14 (Discussion off the record.)

15 THE WITNESS: Sometime, and I'm not -- no
16 exact date, I got a -- got a call from Verinder, and
17 he basically wanted me to update him on the case.

18 BY MR. GICALE:

19 Q Now, who was Verinder?

20 A He would have been the deputy -- he would
21 have been -- we changed their titles. He would have
22 been the deputy assistant director to Larry Potts,

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1 who was the assistant director of the criminal
2 investigative division. His side of the house would
3 have handled this type of a case. And I got a
4 call -- and I don't exactly recall the date -- from
5 Verinder, wanting me to update him on the case. And
6 I gave him the full -- a short oral briefing on the
7 phone and saying we had had a full investigation, it
8 was the first one we tried. The trial went about two
9 weeks, I went into it, and that McDougal was the main
10 target and was acquitted and leading then up to the
11 referral and that type of thing.

12 Q Now, was that before or after your meeting
13 with Banks's staff on September 23, 1992, if you
14 recall?

15 A I don't recall.

16 Q Then the next detailed communication, would
17 that have been this October 7, 1992 communication?

18 A I believe so.

19 MS. SIMONTON: Just give the FBI number
20 that you're referring to.

21 THE WITNESS: FBI referral number is 960.
22 On 10-6 -- right. In this teletype -- I hadn't got

1 to that, but in this teletype, we advise of that
2 meeting.

3 BY MR. GICALE:

4 Q Well, let's take some of these pages one at
5 a time. First of all, page 2 of the teletype, and
6 this is identified also as Bates number 987, in that
7 you reference the August 26, 1992 Airtel, which was
8 in anticipation of the criminal referrals that we
9 talked about earlier; correct?

10 A And a general overview of what it would
11 entail.

12 Q Now, on page 4 of the teletype, and this
13 would be document 989, your agency went into the
14 background with respect to the prior criminal case
15 that you talked about; is that correct?

16 A Correct.

17 Q Now, incidentally, who prepared this
18 teletype?

19 A Irons would have probably done most of it.

20 Q Who would have assisted him or who did
21 assist him?

22 A You know, maybe people on his staff,

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1 Gretchen. I'm not sure.

2 Q Would you --

3 A The original person who -- the first case
4 in Morgan Guaranty was Gary Aaron. Whether he would
5 have helped, I don't know.

6 Q You mean Madison Guaranty?

7 A Right. DKP, SD.

8 Q Whose initials are?

9 A I don't know. SD, I don't know who that
10 is. DKP is not my initials. I'm fairly certain I
11 would have seen this.

12 Q That was my next question. Did you review
13 this before they sent it to headquarters?

14 A I would have thought so. I don't see my
15 initials anywhere, but I would have thought I would
16 have because I was certainly cognizant of the impact
17 and the sensitivity and --

18 Q Now, I'm going to direct your attention to
19 page 5 and this would also be document number 990.
20 The last three lines of that page.

21 A Right.

22 Q Now, we are -- the teletype indicated the

1 analysis cited in the last two paragraphs of page 5
2 clearly indicated illegal check-cutting activity.
3 Was that your office's conclusion at that point in
4 time?

5 A As I recall, the first trial was primarily
6 related to land flips. And there was some -- as a
7 result of the preliminary assessments and everything,
8 that there might be some illegal check-cutting
9 activity, that they had to do some more study and
10 analysis, that's correct.

11 Q Now, on the next page, page 6, also labeled
12 as document number 991, I would direct your attention
13 to the first full sentence starting with "in addition
14 to the alleged check cutting," do you see that
15 sentence?

16 A Yes, sir.

17 Q Now, the teletype indicates that the
18 McDougals are alleged to have diverted the proceeds
19 of their MGSL home purchase and improvement loan.

20 A Correct.

21 Q Was that something you discussed at the
22 meeting with Banks, do you recall?

1 A We were fairly detailed regarding the
2 McDougals, right.

3 Q Do you recall discussing the --

4 A I don't recall specifically but we probably
5 did.

6 Q Did you feel at that time that that had to
7 be further explored?

8 A It was something that could be looked at,
9 right.

10 Q Now I'm going to direct your attention to
11 page 10, document number 995. The beginning of the
12 first full paragraph, the sentence starting with "it
13 was the opinion." Do you see that sentence?

14 A 995 --

15 Q Paragraph starts "on September 23, 1992."

16 A Okay, I got you.

17 Q Do you see the sentence starting with "it
18 was the opinion"?

19 A "USA Eastern District of Arkansas. The
20 information concerning the check cut was of possible
21 interest with Anspaugh as a possible target."

22 Q Does that accurately reflect the status of

1 your conversations as of October 7, 1992?

2 A As I recall.

3 Q Then I'm going to direct your attention to
4 a sentence further in that paragraph where it says
5 "it was also noted." Do you see that sentence?

6 A Yes, sir.

7 Q "That a complete and factual determination
8 of what transpired in any facet of the referral would
9 take some time."

10 A Exactly.

11 Q Was that your conclusion as well as the
12 conclusion of the U.S. Attorney at that point in
13 time, October 7, 1992?

14 A Right, that we need a more detailed
15 analysis. And I think again, I don't recall exactly
16 but I think we're primarily referring to these 300
17 documents, or enclosures, whatever they are.

18 Q In the next sentence, there's a reference
19 to doing some legal research, statute of limitations
20 and an in-depth analysis; correct?

21 A Correct.

22 Q And all of that, that's a further

1 indication of what you discussed at that meeting with
2 Banks; is that correct?

3 A Correct.

4 Q That's consistent with what you discussed?

5 A Right.

6 Q And that's how it was left on October 7?

7 A On 996 it says we still haven't received
8 the documents, the enclosures I guess or the
9 exhibits.

10 Q Now, as a result of this teletype, did you
11 have any subsequent discussion with FBI headquarters
12 responding to this teletype?

13 A Can I refresh my memory here?

14 Q Maybe I have a document that can help you.
15 I'm going to show you document number 523, and this
16 is a communication dated 10-9-92 and it's document
17 523 through 525 from Director FBI to FBI Little
18 Rock. Can you identify that for us?

19 A Yes, yes.

20 Q What is that?

21 A Basically headquarters is telling us to
22 initiate a limited investigation aimed at determining

1 the extent of violations as alleged in the RTC
2 criminal referral dated 9-1-92.

3 Q Now, this is from Kendrick; is that
4 correct, FBI headquarters? I'm sorry, it's from the
5 director but --

6 A It's from the director. I don't know who
7 would have sent it. I don't know who. It would have
8 come out of the --

9 Q That office?

10 A That office, right. The director would
11 have seen it. The director -- it would have come out
12 of headquarters. Normal procedure, Kendrick would
13 have probably dictated and somebody at Kubic's level
14 or something would have signed it out.

15 Q Now, was this teletype in response to your
16 10-7-92 teletype?

17 A It would appear so, right.

18 Q Now, are you aware -- strike that.

19 A I didn't read the note. That probably
20 explains it. That's the --

21 Q Yes. I'm going to direct your attention to
22 page 3, also document number 525, of that teletype.

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1 Can you review that for a minute?

2 A Right. This is a note attached at
3 headquarters that we don't see.

4 Q That you wouldn't have seen at the very
5 beginning?

6 A Right, right.

7 Q With the document --

8 A The ticklers went to Verinder, Kubic, Dick
9 and Kendrick.

10 Q That document, let me get the number again,
11 number 525, is the third page of this document dated
12 10-9-92, this communication, but that also happens to
13 be the document that I showed you earlier, number
14 997, correct, where I had page 3 without pages 1 and
15 2?

16 A Right.

17 Q Now, does that document indicate how it was
18 that this communication came to your headquarters in
19 Little Rock?

20 MR. KRAVITZ: Can I just interrupt for one
21 moment? I just want to make sure the record is
22 clear. I believe that Mr. Pettus testified that he

1 did not receive page 3 at the time that his office
2 received pages 1 and 2.

3 THE WITNESS: Right, right. This is a note
4 that stays at headquarters.

5 BY MR. GICALE:

6 Q All right, I'm sorry. So that was not with
7 the teletype that you received?

8 A No, no. This is an administrative
9 procedure. Copy designations, this is strictly done
10 at headquarters and these are the people at
11 headquarters that get it, Verinder, Kubic, Dick. We
12 did not get this in the field. What we get is the
13 first two.

14 Q Were you aware of any conversations that
15 the director or director's office had with the
16 Department of Justice with respect to the type of
17 investigation that should be conducted at this point
18 on October 9, 1992?

19 A Sometime in that period, I got a call from
20 either -- it must have been Potts. Verinder called
21 the first time and this was earlier, and I don't know
22 the exact dates, and then at a later time period, I

1 did get a call from Potts that he had been in contact
2 with the department. Whether that's it or not, that
3 would probably fit, but I'm not sure.

4 Q Did he indicate who in the Department of
5 Justice he had talked to with respect to this?

6 A I don't recall. He just said -- I'm not
7 sure. I know he said he had talked to department
8 officials, and I'm not sure whether he mentioned the
9 names or not.

10 Q Did he indicate whether it was an in-person
11 meeting or telephone call?

12 A No, not that I recall.

13 Q But in any event, he indicated that he had
14 been in consultation with the Department of Justice
15 with respect to --

16 A He had had an inquiry or some consultation
17 with the department, right.

18 Q And did he indicate whether or not the
19 department was in agreement with how you should
20 proceed in this matter, Department of Justice, that
21 is?

22 A I believe this is the preliminary leading

1 up to the limited inquiry. Is this the limited --
2 let me look at that again. This is 10-9.

3 MR. KRAVITZ: Just so the record is
4 clear --

5 THE WITNESS: Okay. I think he probably
6 talked to the department. I think he probably --

7 BY MR. GICALE:

8 Q Just one minute. Again, you've just
9 referred to document number 523 through 525.

10 A Do I need to repeat that?

11 Q What you just said, yes.

12 A Document 5234 through --

13 Q No, you don't need to repeat the numbers,
14 just the document.

15 A Okay. This is the teletype from the
16 director to Little Rock dated 10-9-92, captioned
17 "subject, James B. McDougal." Now, with an attached
18 note, which stays strictly at FBI headquarters, I
19 guess it doesn't have a date on it.

20 Q But you would not have received this with
21 the teletype?

22 A No, I would not have received the note, but

1 I'm believing that if -- if it was Potts who talked
2 to the Bureau official, to the department, on 10-8,
3 then this would have been sent out on 10-9. And I
4 believe he told me that he was going to request a
5 limited investigation, which is the crux of this
6 teletype.

7 Q He was going to request who do a limited
8 investigation?

9 A Little Rock. Is that -- I believe that's
10 the terminology, wasn't it? Right, correct, right,
11 right. Not 100 percent sure but I believe that was
12 the crux of the call now that I -- that would have
13 fit.

14 Q Now, as a result of this teletype and this
15 discussion with Potts, what did your office in Little
16 Rock then begin to do?

17 A I believe now we began the review, which I
18 believe in this -- can I look at this again?

19 Q Sure.

20 A Right. The review, we're supposed to get
21 the documents from the U.S. Attorney's office and
22 we're going to conduct a joint review and get a

1 response back to FBI headquarters by close of
2 business 10-16-92.

3 Q Now, the date, 10-16-92, who determined
4 that this would have to be done by October 16, 1992?

5 A I don't recall specifically, but I'd say
6 that it -- I'm sure at this time Irons was talking to
7 Kendrick, this is the way they generally develop, and
8 he was also talking to somebody in the U.S.
9 Attorney's office and I may have talked to Banks, I
10 don't know, but we thought this would be a fairly
11 reasonable time period that we could make a fairly
12 objective review and analysis.

13 And I might have even talked to Potts about
14 that. I don't recall. I just don't recall if that
15 would be -- but I think it would have been a -- we
16 would have met, we would have talked and okay, this
17 is quite an extensive number of documents. What is a
18 fairly reasonable period that we can do the review in
19 and make a reasonable response?

20 Q Well, I mean is there some significance to
21 the date? For instance, why wouldn't it have been
22 October 17 or 18 or November 30, for instance?

1 A I would assume the 16th is close of
2 business Friday, but I don't know. I imagine it's a
3 full week, but I'm not for sure.

4 Q So it was just an attempt to gauge how much
5 time it would take. Was there a focus on any date,
6 for instance? Was there a focus on whether or not to
7 get this done before the election in November?

8 MR. KRAVITZ: You're asking him based on
9 his own knowledge? Because he didn't set the date.

10 MR. GICALE: Yes. Well --

11 THE WITNESS: I don't recall that that was
12 actually said, hey, we want to do this by the
13 election, but I'm sure a consideration was that we
14 would have a fairly quick review so it would be fair
15 and objective rather than stringing the thing out and
16 then find out later on that there might have been
17 something in there. Yeah, we were trying to be fair
18 and objective and a week's period sounded fairly
19 reasonable and then we'd at least have a fairly good
20 analysis.

21 BY MR. GICALE:

22 Q But you don't know at this point who came

1 up with the date?

2 A No.

3 Q You don't recall?

4 A But I'm pretty sure it was a pretty good
5 consensus that we thought that would be fair and
6 reasonable time period that they could do a pretty
7 good assessment.

8 Q Now, between -- or I'm sorry, after
9 September 23, 1992, did you have any subsequent
10 meeting with Mr. Banks's office with respect to this
11 referral?

12 A Well, there would certainly have been
13 discussions with the AUSA and with Irons and then
14 he -- I know there was some discussions before he
15 sent me a letter on October 16, so yeah, there would
16 have been discussions, but I don't know exact --

17 Q Discussions between you and Banks?

18 A Right.

19 Q Or between others?

20 A Between me and Banks and also between Irons
21 and his counterpart in Banks's office.

22 Q Well, these were discussions in Banks's

1 office?

2 A As well as review. I don't recall AUSA but
3 they also had an AUSA involved in the review during
4 that week.

5 Q Who was that AUSA? Do you know?

6 A I don't recall. I want to say Dodson, but
7 I'm not sure of that. Mack Dodson, but I'm not sure
8 of that.

9 Q And again, these discussions, did they
10 occur in the U.S. Attorney's office or the FBI office
11 or were they over the phone?

12 A I believe they would be both because that's
13 I saw Banks weekly. I generally would see him, he'd
14 either be out to my office or I'd be to his office on
15 a weekly basis. So I'm sure I saw him personally and
16 I'm sure there was a phone conversation, because I
17 knew he was sending a letter.

18 Q Well, then I'm going to show you what's
19 marked for identification as Exhibit Number 1000, a
20 letter dated October 16, 1992 to Mr. Don Pettus
21 regarding RTC referral number C0004. Is this the
22 letter that you were just referring to?

1 A That's correct. Yes, sir.

2 Q Now, how was it that you knew that you
3 would be receiving this letter?

4 A I don't recall exactly but -- I believe
5 that he would probably have indicated it in a
6 telephone call at the very least that he was going to
7 send a letter.

8 Q I'm going to direct your attention to the
9 third paragraph in this letter, the first sentence.

10 A Right. See, there -- he was responding to
11 the teletype that we got on the limited so --

12 Q In that third paragraph, he indicates that
13 the only allegations having any credibility worthy of
14 possible deliberation for investigation exists
15 against Mr. and Mrs. McDougal and Lisa Anspaugh; is
16 that correct?

17 A That's correct.

18 Q That was his conclusion at that point in
19 time on October 16, 1992; is that correct?

20 A That's what he says in that sentence.

21 Q Now, I'm also going to direct your
22 attention to the second to last paragraph on page 2

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1 of the letter, and it's also referred to as document
2 number 1001. Do you recall that paragraph?

3 A Which one now?

4 Q Starting "in due time," second to the last
5 paragraph on page 2.

6 A Right, right. Okay.

7 Q Do you recall that paragraph in the letter?

8 A Yes.

9 Q Is that paragraph consistent with your
10 discussions with Mr. Banks?

11 A I believe so.

12 Q So at that point in time, he indicated that
13 he would be happy to meet with you to discuss the
14 limited examination with respect to these allegations
15 at some future point in time?

16 A Right.

17 Q So as of October 16, 1992, what was the
18 status of this investigation based on this letter and
19 your conversations with Mr. Banks?

20 A Well, this is -- the day, October 16, is
21 the date that we're supposed to have our
22 recommendation back into headquarters, telling them

1 what the result of our review is.

2 Q I'm going to show you --

3 A So he had obviously got some feedback on
4 who he had reviewing it as to what was --

5 Q And this is his feedback to you --

6 A Right.

7 Q -- in addition to your discussions with
8 him?

9 A Right, right.

10 Q Prior to that letter?

11 A Right.

12 Q Now, as a result of that letter and your
13 discussions with him, I assume you had some
14 discussions with your staff --

15 A Sure.

16 Q -- with respect to the letter?

17 A Sure.

18 Q And as a result of those discussions, the
19 discussions with your staff, the discussions with
20 Mr. Banks about this letter, did you then have a --
21 was a teletype written to go to headquarters with
22 respect to the investigative posture of this case?

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1 A Yes.

2 Q I'm going to show you what's marked for
3 identification --

4 A This is the 10-16 one; right?

5 Q Well, I'll show you. It's marked for
6 identification as FBI 526 through 528. Can you
7 identify this for us, please?

8 A Right, 10-16.

9 Q What is this document?

10 A This is a teletype that we sent to
11 headquarters captioned "James B. McDougal," telling
12 them that we did "conduct an extensive review of the
13 referral and all the approximately 300 exhibits
14 furnished to USA by the RTC. USA concurs there is
15 absolutely no factual basis to suggest criminal
16 activity on the part of any of the individuals listed
17 as witnesses in the referral."

18 Q Now, before you go on with the whole
19 teletype, can I just ask you some specific questions
20 with respect to some specific sentences in that
21 communication?

22 A Sure.

1 Q With respect to page 2, the last sentence
2 in the top paragraph, it's not a full paragraph, it's
3 a paragraph that runs over from the first page, and
4 this is also document number 527, the last sentence
5 starting with "the USA feels." Do you see that
6 sentence?

7 A Okay. "USA feels the limited data
8 furnished may indicate criminal activity"?

9 Q Right. Can you read that sentence for me,
10 please, just to yourself for the time being.

11 (Witness reviewed the document.)

12 A Right.

13 Q Now, that sentence which indicates that
14 U.S. Attorney feels that there is evidence of
15 criminal activity and that there may be some evidence
16 of criminal activity on the part of McDougals and
17 Anspaugh, was that --

18 MR. KRAVITZ: I'm going to object to that
19 question. I think if you're going to paraphrase it,
20 I think you just ought to read it so it's accurate.

21 BY MR. GICALE:

22 Q That sentence states "the USA feels the

1 limited data furnished may indicate criminal activity
2 on the part of captioned subjects, James and Susan
3 McDougal and Lisa Anspaugh." It further states
4 "however, USA is holding provision of prosecutive
5 opinion regarding those subjects in abeyance."

6 A Right.

7 Q Is that consistent with what you knew to be
8 Mr. Banks's position and his office's position on
9 October 16, 1992 with respect to that case?

10 A Yes, sir, as I recall.

11 Q So it was still an open matter at that
12 point in time?

13 A Right, right, right.

14 Q Now I'm also going to direct your attention
15 to the last sentence of that page, starting with the
16 word "while" where it says "while the available
17 facts."

18 A Okay.

19 Q Now, that sentence says "while the
20 available facts indicate elements of one or more
21 federal violations may exist, USA is considering the
22 likelihood of proving such violations and the

1 manpower opportunity for other investigations of
2 pursuing McDougal a second time."

3 Is that consistent with what you knew to be
4 the U.S. Attorney's position with respect to this
5 case on October 16, 1992?

6 A As I recall, yes.

7 Q Then referring to page 3, document 528, the
8 first full paragraph states the following:
9 "Accordingly, Little Rock remains in a
10 noninvestigative posture regarding this matter and
11 will not conduct any investigation without the
12 concurrence of USA and a positive prosecutive
13 opinion."

14 A Yes.

15 Q Is that sentence consistent with what you
16 understood to be the U.S. Attorney's position and the
17 FBI's position with respect to this case at that
18 time?

19 A Right. That's what we're telling
20 headquarters.

21 Q Okay. Now, what did you mean by a
22 "noninvestigative posture"?

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1 MR. KRAVITZ: Can I just -- I'm sorry, can
2 I just interrupt for a second?

3 MR. GICALE: Go ahead.

4 MR. KRAVITZ: My reading of this paragraph
5 is that it doesn't say anything about what the U.S.
6 Attorney's office status is. It really refers to
7 what the FBI Little Rock office's status is.

8 THE WITNESS: That's what we're telling
9 headquarters, right.

10 MR. KRAVITZ: I think your question --

11 MR. GICALE: I asked both.

12 MR. KRAVITZ: -- sought to sweep in both.

13 THE WITNESS: Little Rock FBI remains in a
14 non -- will not conduct -- without the concurrence of
15 USA.

16 MR. GICALE: I meant to ask both.

17 MR. KRAVITZ: My only point was I think you
18 guys were passing in the night. I wanted to make
19 sure that the record wasn't inaccurate.

20 BY MR. GICALE:

21 Q We'll clarify it. With respect to this
22 paragraph, was that the position of the U.S.

1 Attorney's office at that point in terms of whether
2 it was continuing to investigate the matter at that
3 point in time?

4 A Yes, I believe so.

5 Q And your office, the Little Rock office of
6 the FBI, was in a noninvestigative posture at that
7 point in time. Now, what did that mean,
8 "noninvestigative posture"?

9 A Certainly we're not going to do anything
10 overt.

11 Q But was the case still open?

12 A I believe so. I'm not sure of that. I'd
13 have to check. When they told us to open the
14 limited, the 10-7 said open a limited; right?

15 MR. KRAVITZ: I think that was 10-9.

16 THE WITNESS: 10-9, thanks. The 10-9 said
17 open a limited. And there's nothing on here that
18 says closed, so I've got to believe that it still is
19 open.

20 BY MR. GICALE:

21 Q Do you need to look at the 10-9?

22 A Yes.

1 Q Just so I have these in sequence, can you
2 give me -- I'm going to show you again what's marked
3 for identification as document 523 through 525.

4 A Limited, right. They told us to do a
5 limited. And as I recall, we left it open but were
6 not -- not any overt or any type investigation -- or
7 any investigation that would --

8 Q Well, without the concurrence of the U.S.
9 Attorney and a positive prosecutive opinion; correct?

10 A Right, right, right. How can we find out?
11 I'm sure -- can I say something here, ask a
12 question?

13 MS. SIMONTON: You can talk to me off the
14 record if you feel a need to do so.

15 THE WITNESS: I'm sure it's still open;
16 right?

17 MS. SIMONTON: No, not with respect to --
18 do you want to go off the record and talk to me for a
19 minute?

20 THE WITNESS: Yes.

21 MR. KRAVITZ: Why don't we take five
22 minutes since we've been going at it for over an

1 hour.

2 (Recess.)

3 BY MR. GICALE:

4 Q I'm going show you what's marked for
5 identification --

6 A Could I make one comment --

7 Q Yes.

8 A -- on the status of the investigation? In
9 the teletype, it says open a limited. I'm not sure
10 where we -- I want to be careful here that I'm not
11 misleading anybody, on a limited investigation or
12 preliminary or noninvestigative, where we -- I don't
13 want to mislead but I'm not -- I don't want to give
14 the impression in that teletype that it's closed and
15 we're not doing anything else, we're certainly going
16 to follow it.

17 But as far as the actual status of the
18 case, was it open pending in the file, I'm not sure,
19 I'd have to look at some more documents. I just
20 don't want to mislead you.

21 Q In any event, you have indicated that the
22 teletype is consistent with your understanding that

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1 it was the noninvestigative posture.

2 A Right.

3 Q And that investigation would not be
4 conducted without the concurrence of the U.S.
5 Attorney in a positive prosecutive opinion at that
6 point; is that correct?

7 A Right. But at the same time we're going to
8 follow this, we're not closing it and not doing
9 anything further, I want to make that clear. We're
10 certainly going to follow it with the U.S. Attorney.

11 Q I'm going to show you also what's marked
12 for identification as document 1032. Unfortunately,
13 there's no date on this document. It says "James
14 McDougal et al., unsub Madison Guaranty Savings and
15 Loan." Are you familiar with this document? And I
16 notice at the bottom there are the initials KBK. I
17 guess would that be Kubic?

18 A 074 KBK. This looks to me again like a
19 notice made at headquarters that we don't see;
20 right?

21 Q Okay. So that's not something that would
22 have been prepared --

1 A No, this looks to me like it was prepared
2 at headquarters strictly for headquarters
3 dissemination.

4 (Mr. Ben-Veniste left the deposition.)

5 Q Now, after sending that teletype out and
6 indicating that you were in a noninvestigative
7 posture, or your office was in a noninvestigative
8 posture, what, if anything, do you recall being done
9 with respect to this case between that time, October
10 16, 1992 and the time that you left the office on
11 January 1, 1993?

12 A Okay. I think it's relevant to this
13 question that I found out around the 20th of October
14 that I was being transferred as agent in charge in
15 Kansas City.

16 Q Being transferred to be --

17 A To be agent in charge.

18 Q Right.

19 A On or about the 20th of October, I actually
20 went up and talked to the office because the SAC
21 there had already gone. He retired. So I did -- I
22 did go up and speak to the office --

1 Q The Kansas City office?

2 A The Kansas City office -- on or about the
3 20th of October, and I made some visits. Although I
4 was still in charge of Little Rock, my focus was now
5 beginning to switch to Kansas City, and I was -- I
6 don't know how many visits I made up there before I
7 actually reported and left Little Rock at the end of
8 the year, but my focus was now switching to the
9 Kansas City office, which was my main mission.

10 Q Now, did you have anything else to do with
11 this referral then, this criminal referral, between
12 that time, then, and the time you formally left the
13 office in January of 1993, if you can recall?

14 A I'm sure there was some discussion, and I
15 believe there was another memo.

16 Q Well, I'm going to show you what's marked
17 for identification as FBI 1077, a letter dated
18 December 15, 1992 to Jean Lewis from Don Pettus.
19 Would that be the document you're referring to?

20 A It could be. And again, just our
21 procedure, all of our letters go out basically with
22 the SAC. I don't believe I signed this out, but I

1 might have. I'd have to -- but -- I can't tell by
2 this who signed it out is what I'm saying. So that
3 would have been a normal follow-up.

4 Q Okay. And just for the record, this is a
5 letter acknowledging receipt of the criminal referral
6 C0004; correct?

7 A Right.

8 Q And indicating to Ms. Lewis that any
9 inquiry from her agency should be directed to --

10 A To the U.S. Attorney's office, right.

11 Q That would have been Floyd Mack Dodson at
12 that office at that time; is that correct?

13 A That's correct, right. He was the chief
14 assistant, number one chief assistant.

15 Q Now, do you recall having anything else to
16 do with this referral between --

17 A No.

18 Q -- the time of the October 16, 1992 letter
19 from Banks to you and the teletype from you to
20 headquarters and the time you left?

21 A We have every year, and I don't recall the
22 exact date, I believe it was in November, we have

1 what we call -- most offices have what we call an
2 annual priorities conference where all the
3 supervisors, the RAs, come in and we go through our
4 cases, our main cases and our resource needs for the
5 forthcoming year and basically set our goals and
6 objectives.

7 The new SAC came to that conference,
8 Satkowski, and I would assume we discussed it
9 somewhat there. Whitehead would have been there, of
10 course, and all the supervisors. There would have
11 probably been 12, 15 people.

12 Q That would have been November of 1992?

13 A That was sometime in November.

14 Q And where would that meeting have been?

15 A It would have been in Arkansas, Hot
16 Springs.

17 Q Where you would have discussed this?

18 A I'm sure we would have -- I'm certain we
19 would have.

20 Q This as well as other cases, I take it?

21 A Oh, yeah, all the major cases in the
22 office, all the cases that have interest to the

1 supervisors. The referrals would have been
2 discussed, from the RTC. And I've got to believe
3 that was mentioned.

4 Q Now, did you have any further conversations
5 with U.S. Attorney Banks or anyone else in the U.S.
6 Attorney's office with respect to this case between
7 October 16, 1992 and the time that you left in
8 January of 1993?

9 A It's possible, but I don't specifically
10 recall, because he knows I've been transferred to --
11 but I just don't recall.

12 Q Now, were you aware at some point in time
13 subsequent to receiving the referral in September of
14 1992 and when you left in January of 1992 that
15 Mr. Banks was considering recusing himself or his
16 office from further pursuing this case?

17 A You mean that he had told me -- I just
18 don't recall.

19 Q Did it come up in the September 23, 1992
20 meeting?

21 A Not that I recall.

22 Q Did it come up at any subsequent meetings

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1 that you had with him?

2 A I don't recall it.

3 Q Did it come up in any subsequent meetings
4 with any members of his staff or members of your
5 staff?

6 A I just don't recall.

7 Q Did you become aware of the fact that he
8 had requested to be recused or his office recused
9 from the Madison criminal referral C0004?

10 A Well, after I was in Kansas City, there was
11 some press releases and so forth that his successor
12 asked to be recused, but I don't believe I -- I don't
13 believe -- I don't specifically recall that he had
14 asked, but I could be wrong.

15 Q But you don't recall discussing it with
16 him?

17 A I don't recall.

18 Q Or with any of your staff?

19 A No. And it could have happened. And like
20 I say, my focus in later October switched to Kansas
21 City, and it could have happened, but I don't recall
22 it.

1 Q Now, at this point in time, do you know who
2 Mr. Irons's primary contact at the RTC was with
3 respect to this referral? And I'm talking about
4 September 1992. Well, actually August 1992 through
5 January '93 when you left.

6 A You mean the individual that he --

7 Q Yes.

8 A It was either Iorio or Lewis. I believe he
9 was actually talking to Lewis.

10 Q By Lewis, you mean Jean Lewis?

11 A Yes. I believe she had responsibility for
12 our area. I do recall that.

13 Q Now, did you or anyone in your office have
14 contacts with Webster Hubbell regarding this criminal
15 referral C0004?

16 A No, sir, not to my knowledge.

17 Q Do you know Mr. Hubbell?

18 A No.

19 Q Have you ever met Mr. Hubbell?

20 A Not to my knowledge.

21 Q Now, do you know Paula Casey?

22 A No.

1 Q Have you ever met Paula Casey?

2 A No, not to my knowledge. I don't think I
3 ever met her.

4 Q Did you have any discussions with the White
5 House with respect to this referral?

6 A No, sir.

7 Q Now, starting in January 1993 when you
8 assumed your responsibilities for the Kansas City
9 office, then would I be correct in stating that your
10 contact with this case was over?

11 A Would have terminated, right. I would have
12 had no further contact once I officially reported to
13 Kansas City.

14 Q And responsibility for this case was
15 concluded?

16 A Right, that's correct, right. Now, and I
17 don't want to mislead you, Little Rock ran it, and
18 there were some documents to be reviewed -- should
19 I --

20 MS. SIMONTON: Go ahead.

21 BY MR. GICALE:

22 Q Have you have -- if you have some

1 supplement.

2 A A group came up from Little Rock and
3 utilized a portion of the Kansas City office to Xerox
4 and review some RTC documents. I had nothing to do
5 with running it. I just made available the room and
6 that type of thing. I had no operational
7 responsibility and really no knowledge of what they
8 were doing. And that was because the records were up
9 there and they wanted a secure place to review them,
10 and we made that available for them. People came up
11 from Little Rock that I knew but I had no operational
12 responsibility. It was run by Little Rock office
13 personnel.

14 Q So whatever happened with respect to the
15 Hale case or the second set of criminal referrals,
16 you were not involved in that, those things?

17 A No, sir, no.

18 Q Did you or anyone in your office have any
19 contacts with any present or former employee of the
20 White House relating to this criminal referral?

21 A No.

22 Q Do you have any personal knowledge of

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1 contacts between any member of the FBI and the White
2 House regarding the criminal referral?

3 A No.

4 Q Did you have any conversations with any
5 persons listed as targets or witnesses of criminal
6 referral C0004 about the referral, including James
7 McDougal, Susan McDougal, Lisa Anspaugh, Jim Guy
8 Tucker, Steven Smith, then Governor Bill Clinton and
9 his wife, Hillary Clinton?

10 A No, sir.

11 Q Did any of these people attempt to contact
12 you at any time with respect to this referral?

13 A No, sir.

14 Q Do you have any knowledge of any improper
15 handling within the FBI or Department of Justice with
16 respect to this criminal referral?

17 A No, sir.

18 Q Do you have any knowledge of information
19 relating to the RTC criminal referrals being shared
20 with individuals other than employees of the
21 Department of Justice, the FBI or the RTC?

22 A No, sir.

1 Q Do you have any other relevant information?

2 A I don't believe so. That was fairly
3 extensive.

4 Q That was pretty broad.

5 MR. SGRO: Off the record.

6 (Discussion off the record.)

7 MR. GICALE: I believe that is all I have
8 at this point. Off the record.

9 (Discussion off the record.)

10 (Whereupon, at 12:55 p.m., the deposition
11 was recessed, to be reconvened at 2:00 p.m. this same
12 day.)
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1 AFTERNOON SESSION (2:02 p.m.)

2 Whereupon,

3 DON K. PETTUS

4 resumed the stand and, having been previously duly
5 sworn, was examined and testified further as follows:

6 EXAMINATION (Continued)

7 BY MR. GICALE:

8 Q I have a few other questions with respect
9 to two other documents, and I wanted to finish that
10 off before we proceeded.

11 Just to remind you, Mr. Pettus, you're
12 under oath. We've just taken a break and you've
13 returned from lunch.

14 I would like to show you what's marked for
15 identification as FBI 3386. Now, this is a log, a
16 director's log dated September 25, 1992. It's a
17 Friday.

18 Are you familiar with this log, by any
19 chance?

20 A No. I assume that it's a log that they
21 keep of who visits the director, but I never was
22 aware of how they kept it or so forth.

1 Q Well, on it your name is on this item,
2 eight spaces up from the bottom. It indicates your
3 name there.

4 A Right, right.

5 Q Now, do you recall whether or not you had a
6 conversation with the director or meeting with the
7 director on that date at that time?

8 MR. KRAVITZ: Can we establish for the
9 record what the date is?

10 BY MR. GICALE:

11 Q I thought we said that. September 25,
12 1995.

13 A I don't recall -- I'm sure I met with him,
14 no question about that. There's two areas that -- I
15 was on what they call the SAC's advisory committee
16 and we met with him on a regular basis.

17 Q Who was the director at that time?

18 A Sessions, Director Sessions. I'd have to
19 find more information to know exactly what it was
20 about, but it could have been in relation to the
21 possibility of Kansas City opening up. It would have
22 been that or the director's SAC advisory committee or

1 I just -- that would have been the logical areas.

2 Q Now, this meeting, this date, this is two
3 days subsequent to your meeting with Charles Banks
4 regarding the criminal referral C0004.

5 A I'm certain it had nothing to do with that.

6 Q You did not have any discussions with the
7 director with respect to that referral in that
8 meeting?

9 A I would -- I'm almost positive that it
10 would not have been that, because that would have
11 been discussed at a lower level and they would take
12 it up with him.

13 Q Did you ever have any discussions with the
14 director on that RTC referral --

15 A Absolutely not, no, no.

16 Q -- that we had talked about earlier with
17 respect to Madison and Whitewater?

18 A No.

19 Q Now I'm also going to show you a log and
20 it's marked FBI 3388.

21 A If I was guessing, I would say this was
22 about Kansas City, but I just don't recall.

1 Q When you say this is, the September 25,
2 1992?

3 A Right.

4 Q The upcoming opening in Kansas City, is
5 that what you're talking about?

6 A Right, right, right.

7 Q Document number 3388 is another log dated
8 December 7, 1992, and I'm directing your attention
9 six lines down to a 10:40 either phone call or
10 meeting.

11 A 10:40 a.m. on December 7.

12 Q Right. Now, do you recall meeting the
13 director on that date or talking to the director on
14 that date?

15 A Well, I'm sure I did. It says here, "saw
16 director"; right?

17 Q Right.

18 A That is probably the -- once we're named
19 and before we formally go to the field office, we
20 have routine visits with all the headquarters
21 executives, including the director, to give us
22 briefings, what they expect out of that office and

1 that type of thing. I believe that's what it was.

2 That would have been about the time period.

3 Q At the time you received these briefings,
4 do you also submit some kind of summary or briefing
5 to your successor or to the director about pending
6 cases in your jurisdiction?

7 A In the new office?

8 Q Well, in the old office.

9 A No.

10 Q Well, on this date, did you discuss with
11 the director the Madison/Whitewater criminal
12 referral?

13 A I'm fairly certain I would not have. I'm
14 sure this is just a preliminary to go on to Kansas
15 City or something to do with the agents advisory
16 group, and I believe it's the last -- the rounds at
17 headquarters. I could check that, but I believe
18 that's the rounds at headquarters.

19 Can we go off the record a minute?

20 MR. GICALE: Yes.

21 (Discussion off the record.)

22 BY MR. GICALE:

1 Q Then directing your attention again to
2 December 7, 1992, did you discuss with the director
3 the RTC criminal referral C0004 with respect to
4 Whitewater/Madison?

5 A I'm certain we didn't.

6 Q Or the McDougals?

7 A I'm certain we didn't and I'm fairly
8 certain that's about going to Kansas City.

9 Q Earlier I said Whitewater and Madison. I
10 mean at that stage, just so it's clear, the referral
11 I was talking about on September 25, 1992 and later
12 on December 7, 1992 is criminal referral C0004, which
13 is the one we discussed before the lunch break;
14 correct?

15 A Right.

16 Q And you did not discuss that with the
17 director?

18 A I'm certain I didn't.

19 Q Certain you did not?

20 A Right.

21 Q Now, just a couple of brief questions.
22 Robert Satkowski, is he still the agent in charge in

1 Little Rock?

2 A No, he required sometime in July, I want to
3 say. He is retired. He's definitely retired this
4 year, in the summer, I believe, is when it was. I
5 don't know the exact date, but I want to say July.
6 He is still in Arkansas but he is retired.

7 Q And earlier I asked for your business
8 address. Do you have a business phone number?

9 A 501-374-3713.

10 Q And what kind of a business is that?

11 A That's contract security, Guardsmark,
12 national company.

13 MR. GICALE: I have nothing further at this
14 point.

15 EXAMINATION

16 BY MR. KRAVITZ:

17 Q Mr. Pettus, I'm going to ask you some
18 follow-up questions relating to some of the areas
19 that Mr. Gicale already asked you about, and I think
20 I may ask you about some additional areas as well.

21 I want to start just by get a little bit
22 more information about your personal employment

1 background. You testified that you were the SAC in
2 the FBI's Little Rock field office from the beginning
3 of 1986 until the end of 1992.

4 A That's correct.

5 Q What's your FBI employment record during
6 the pre-1986 period?

7 A I came in the Bureau in 1963 right out of
8 law school. My first office was Detroit. After
9 about a year there I went to New Jersey, spent
10 several years in New Jersey and I was working
11 organized crime, foreign counterintelligence, general
12 criminal matters. I became a supervisor and was
13 transferred to headquarters.

14 Q When was that?

15 A In 1975.

16 Q That was when you became a supervisor?

17 A At headquarters. No, I became a supervisor
18 in Little Rock around '71.

19 Q You mean in New Jersey?

20 A Right, right. I'm sorry. Right, in New
21 Jersey in '71, around '71. All of my investigative
22 career I worked organized crime, criminal cases, and

1 then they made me supervisor on the foreign
2 counterintelligence work.

3 Q And then you say you moved to headquarters
4 in --

5 A In the foreign counterintelligence section,
6 right.

7 Q That was in 1975?

8 A As a supervisor, right.

9 Q How long did you stay there?

10 A Spent about three -- I came here '75, went
11 on the inspection staff for I guess six months, came
12 back as what we call a unit chief in the budget
13 section. Then I went to New York as assistant agent
14 in charge of the counterintelligence division.

15 Q When was that?

16 A That would have been '80, '79 or '80.

17 Q That would have been an ASAC?

18 A Right. Spent about I guess a year -- wait
19 a minute now. I'm losing track of my time.

20 Q You only have six more years to account
21 for.

22 A I spent about a year and a half in

1 New York, came back here as section chief in charge
2 of the budget section for foreign
3 counterintelligence.

4 Q When you say you came back here, do you
5 mean D.C.?

6 A Right, right, headquarters.

7 Q That would be 1981 or 1982?

8 A I believe I went to New York in '78 and
9 came back in '80. I'm not sure there. Maybe --
10 maybe I went in '80 and came back in '81. I'm not
11 sure of that. It's in that time span. I spent the
12 rest of the year and a half in New York, came back
13 here as branch chief or section chief in the budget
14 administrative side, foreign counterintelligence.
15 There was three sections.

16 I'd been there about six months and they
17 moved me over to the operations section which they
18 called at that time everything but the Soviets, the
19 rest of the world. This is a period when we're
20 putting spies in jail and they wanted somebody with
21 criminal experience. And I stayed in that position
22 until I got transferred to Little Rock in 1986.

1 Q Do you have any experience investigating
2 financial fraud?

3 A I would say not personally, but I've been
4 involved in New Jersey, a lot of our organized crime
5 cases spun over in political corruption and fraud, so
6 I've had a lot of exposure to it. I didn't actually
7 investigate it but I've certainly had -- I've had
8 exposure to it.

9 Q And you felt at least as of early -- as of
10 the early 1990s you felt as if you understood the
11 various investigative issues that would arise in
12 investigations relating to financial fraud cases?

13 A Right. I certainly knew the focus and
14 could get -- had enough knowledge to get the right
15 people to run it.

16 Q Did you understand the process by which the
17 FBI sought to prioritize its resources among various
18 potential financial fraud cases?

19 A I did, right. As a matter of fact, in the
20 office, and this is something we started back around
21 '85, we had -- we brought all the supervisors into
22 an office and in the beginning of the year set our

1 priorities for the forthcoming here, white-collar
2 crime, drugs, which was heavy focus in that period,
3 and the general criminal programs and how we would
4 allocate our resources in those major cases that we
5 would focus on.

6 Q You said 1985. That's while you were still
7 at headquarters?

8 A Just after. '96 would have been the first
9 one, when I got to Little Rock.

10 Q '86?

11 A Pardon?

12 Q You said '96.

13 A Oh, I meant '86, right.

14 Q Getting ahead of yourself there.

15 A '86, right.

16 Q Why don't we just for the record, so it's
17 clear, is it true what you just said, is that shortly
18 after you arrived in Little Rock in 1986, you held
19 periodic meetings with your supervisors to set
20 priorities for the Little Rock FBI field office?

21 A And we would actually have a two-day
22 conference where we developed our priorities and set

1 our goals and objectives for the forthcoming here.

2 Q Which supervisors attended that two-day
3 conference?

4 A All the supervisors in the office, all the
5 major programs, they would all be there. The
6 assistant agent in charge would be there.

7 Q So within the Little Rock FBI field office,
8 there is one special agent in charge, and that was
9 you?

10 A That's correct.

11 Q And how many assistant special agents in
12 charge?

13 A One.

14 Q And who was that as of 1986? Was that
15 Mr. Whitehead?

16 A No, it was not Mr. Whitehead. Mr. Kelly
17 was there the first three months I was there. He
18 retired. Then Bill Ball came in as the assistant
19 agent in charge, who just retired here as an
20 assistant director, and then Mr. Whitehead succeeded
21 Mr. Ball. I want to say Ball was there about two
22 years.

1 Q So Whitehead would have come in in the late
2 1980s?

3 A Right.

4 Q And then who is -- what positions are
5 beneath the assistant special agent in charge?

6 A You have what we call squad supervisors.
7 Typically they will have 10 to 14 agents, and they
8 will handle the various criminal -- the various
9 programs. One basically would handle white-collar
10 crime, one would handle drugs, one would handle
11 general criminal.

12 Q How many squad supervisors?

13 A I believe when I left we had three in
14 Little Rock and one at Western District, which was up
15 in Fort Smith.

16 Q And each of the squad supervisors you say
17 would have 12 or 14 agents working for him or her?

18 A Yes, sir.

19 Q Now, as of early 19 -- the early 1990s, say
20 1991, '92, who was the squad supervisor for financial
21 crimes?

22 A The last -- Steve Irons was the supervisor,

1 he succeeded Larry Deaton, who I moved over to the
2 general criminal squad. I believe that happened
3 right around 1990, but I'm not sure.

4 Q As of the time the criminal referral came
5 in?

6 A It was Steve Irons.

7 Q Just so the record is clear, as of the time
8 that the criminal referral came in at the beginning
9 of September 1992, Steve --

10 A Definitely Steve Irons.

11 Q -- Steve Irons was the squad supervisor for
12 financial crimes?

13 A Right, right.

14 Q Let me just, I apologize for appearing to
15 be a bore. It's just a lot of times you're going to
16 know what my question is before I finish it, but it
17 ends up being meaningful for the record only if I
18 actually finish it.

19 It makes it seem less like a conversation
20 and more like an interrogation. I apologize for
21 that. It's not intended that way.

22 What was your typical working relationship

1 with Mr. Irons while he was squad supervisor for
2 financial crimes and you were the special agent in
3 charge in Little Rock?

4 A Well, I selected him as supervisor and
5 recommended him because of his background. He had
6 had extensive experience in Philadelphia, he had done
7 a good job in Little Rock and on some complicated
8 cases. As I recall he was a CPA and he had a very
9 good knowledge of complicated cases in a major
10 office, as well as doing a good job in Little Rock,
11 which is a smaller office.

12 Q How many years of experience investigating
13 financial crimes had Mr. Irons had before you
14 appointed him squad supervisor, approximately?

15 A I believe six or eight, but I'm not
16 absolutely certain, but I believe six to eight years.

17 Q In your opinion, did Mr. Irons have good
18 judgment in terms of being able to identify cases
19 that were worthy or more worthy of prosecution than
20 other cases?

21 A Yes, sir.

22 Q In your opinion, was Mr. Irons an effective

1 supervisor in terms of setting the FBI Little Rock
2 office's priorities among the various cases that it
3 was considering investigating?

4 A I think he did a reasonably good job. He
5 was relatively new, but yeah, he did a good job.

6 Q How often did you actually communicate with
7 Mr. Irons about specific cases while he was the squad
8 supervisor and you were the special agent in charge?

9 A Well, that's a small office. I think I
10 indicated earlier there's approximately 100 people,
11 roughly 60 of them agents, so you have an open door
12 policy, particularly with your supervisors. He could
13 come in at any time and discuss an issue. I make a
14 point of visiting the squads during the course of the
15 day to ask them if there was any issues or anything,
16 and typically we would have a squad supervisors
17 conference once a week.

18 Q But you spoke with Mr. Irons daily, then?

19 A On a regular basis.

20 Q Now, who were the people at FBI
21 headquarters you dealt with on a regular basis while
22 you were SAC in Little Rock?

1 A I had a little different role there, and I
2 think I got -- at that time there was director SAC
3 advisory committee, which was five SACs. We met with
4 the director on issues of national policy, not
5 individual cases, these were primarily issues of
6 national impact, and made recommendations to him.

7 So we met with him on a fairly regular
8 basis. And generally when we would come back to meet
9 with him, we would also touch base with the assistant
10 directors, particularly the key ones in that would be
11 the criminal investigative division and the foreign
12 counterintelligence division, and we may touch base
13 with some of the training division assistant
14 directors if there was an issue that we felt was
15 appropriate or something like that.

16 Q Who was the assistant director for criminal
17 investigations back in 1992?

18 A Larry Potts.

19 Q And the assistant director for criminal
20 investigations, is that directly beneath the deputy
21 director or the assistant director of the FBI?

22 A It would be right below -- at that time,

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1 I'm certain it was below the deputy director.

2 Q Now, who were the people at FBI
3 headquarters that a squad supervisor like Mr. Irons
4 would deal with or have communications with on a
5 regular basis?

6 A He would normally deal with the counterpart
7 who would be called a supervisor on a white-collar
8 crime unit at FBI headquarters. At headquarters
9 there are sections which handle -- say there's a
10 white-collar crime section. There may be three
11 units, there may be four or five units. And each of
12 those units have various areas of responsibility
13 within the white-collar crime program. There might
14 be one on public corruption, might be one on failed
15 financial institutions.

16 There's a unit chief in charge of each unit
17 and below him or her may be two or three
18 supervisors. Irons would report generally to that
19 supervisor, one of those supervisors.

20 Q Do you know who that supervisor was or
21 those supervisors were as of the fall of 1992?

22 A I believe in this area it was Kendrick.

1 Q Now, would Kendrick be above Mr. Irons in
2 the FBI hierarchy, or does no one know the answer to
3 that question?

4 A In general, I'd say yes, but their pay base
5 and everything is the same, but I think he would
6 be -- Mr. Irons might say different but I would say
7 Kendrick would be perceived as being from
8 headquarters and therefore he'd rank above Irons.

9 Q What position did Fred Verinder have?

10 A Okay. He was the assistant director in the
11 criminal investigative division for I believe the
12 white-collar crime program.

13 MS. SIMONTON: Off the record?

14 MR. KRAVITZ: Sure.

15 (Discussion off the record.)

16 THE WITNESS: Verinder was the deputy
17 assistant director. The assistant director was Larry
18 Potts. Now, I'm not exactly sure how many deputy
19 assistant directors there were. I believe there was
20 three, but my recollection is that Verinder -- I know
21 he had charge of the white-collar -- oversaw the
22 white-collar crime programs, and he would report

1 directly to Mr. Potts.

2 BY MR. KRAVITZ:

3 Q Now, who in your office, if anyone,
4 dealt -- would deal directly with someone at
5 Verinder's level?

6 A That would generally be myself.

7 Q So Irons would work -- would deal mostly
8 with Kendrick and you would deal with Verinder or
9 Potts or the director?

10 A Exactly. And there are exceptions, but
11 that's a general rule. If I'm out of the office and
12 Tom Kubic, who was the section chief, would call, he
13 or the ASAC might talk to him but that's typically
14 the way we described it. That's the way the
15 organizational --

16 Q Tom Kubic, what was his position?

17 A He was the section chief in the area of
18 white-collar crime that handled the RTC referrals.

19 Q Section chief at headquarters?

20 A Right.

21 Q So he's underneath Verinder?

22 A Right, he reports to Verinder.

1 Q Got you. I think I understand that.

2 A Okay. Would it help if I go through it
3 again?

4 Q I think we're --

5 MS. SIMONTON: Off the record for just one
6 minute.

7 (Discussion off the record.)

8 BY MR. KRAVITZ:

9 Q Now that we've totally confused everyone as
10 to the workings of the FBI, I want to ask you some --
11 I want to go back in time a little bit, before
12 Mr. Gicale started his questioning, back to 1991 and
13 ask you some questions related to the factors that
14 the FBI Little Rock field office considered in
15 setting its priorities as to which failed S&L
16 institutions it was going to investigate most
17 aggressively.

18 And I'm actually hoping that this will
19 assist you in remembering things. I'm going to let
20 you hold on to a three-page chronology which has been
21 marked as FBI numbers 1526 through 1528. I don't
22 know whether you've ever had an opportunity to see

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1 that chronology before or not.

2 Does that look at all familiar to you?

3 A I don't believe I've seen this.

4 Q Okay. I'm going to refer you to certain
5 entries in it. If it helps you remember certain
6 things, that's great. If it doesn't, it doesn't.
7 But I want to direct your attention to the first
8 entry on page 1526, which is marked in terms of the
9 time line late 1991 to early 1992.

10 Let me just read that into the record since
11 we're not going to be attaching the actual document
12 into the record. And this entry reads as follows:
13 "SSA requested Jean Lewis, RTC, work on preparing
14 referrals for Savers and First Federal. Both failed
15 institutions located in Little Rock. RTC was advised
16 FBI was not interested in referrals on institutions
17 where we had previously had prosecutions as much as
18 we were with institutions which had been unaddressed
19 for some time."

20 First of all, do you know who SSA refers --
21 what that refers to?

22 A Probably Irons.

1 Q Steve Irons?

2 A Right. Supervisory special agent.

3 Q Do you have any recollection of Mr. Irons
4 making a request of Jean Lewis at the RTC in late
5 1991 or early 1992 to prepare referrals in the Savers
6 and First Federal cases?

7 A Well, I believe she had basic
8 responsibility for our area out of Kansas City. I am
9 aware that we were very interested in referrals on
10 the Savers and First Federal, major failures I
11 believe -- and I could be -- I believe First Federal
12 was roughly 900 million. Anyway, I'm not sure which
13 one, but one was I believe roughly a \$900 million
14 failure and the other one was a roughly \$600 million
15 failure, so there were substantial amounts of money
16 involved, and based on information that we had
17 gathered, we thought there was a possibility of fraud
18 in both of those and we were interested in a referral
19 so we could begin our investigation.

20 Q Now, when you say that we were interested
21 in referrals and we thought that there was a
22 substantial possibility of fraud involved, who gets

1 swept up in the word "we"? Who within your office?

2 A That would be the white-collar crime squad,
3 those working the failed institutions where there was
4 possibly fraud, which would be Steve Irons's squad.

5 Q That would also include you?

6 A As the SAC.

7 Q As the senior official in the office?

8 A Exactly.

9 Q What were the factors that the Little Rock
10 FBI field office considered in determining which
11 failed financial institutions it was most interested
12 in receiving referrals regarding?

13 A First off would be the amount involved in
14 the failure is certainly a critical factor. The
15 major one we had not listed here was first South,
16 which was in excess of a billion dollars. And within
17 the Department of Justice, there was a top 50. It
18 was one of the top 50. We had a trial in that and
19 had I believe a total of four or five convictions, so
20 we looked at the amount of loss as a result of the
21 failure.

22 Then we typically got information in that

1 failure, whether or not there was fraud or probable
2 fraud or that type of thing, so that was also a
3 factor. I'd say those were the two main
4 considerations, was there fraud, how many people were
5 involved in the fraud and the amount of the failure,
6 and the culpability.

7 Q What do you mean by "culpability"?

8 A The extent of the fraud, pervasiveness,
9 that type of thing.

10 Q What about the question whether an
11 institution had previously been investigated by your
12 office, perhaps even whether there had previously
13 been a trial relating to the failure of that
14 institution?

15 A Well, for instance, Morgan Guaranty --

16 Q You mean Madison Guaranty?

17 A Madison Guaranty, sorry -- as I recall
18 involved a loss of about \$47 million. We had a very
19 extensive investigation. As I recall, it was the
20 first case that we took to trial. It lasted I
21 believe almost two weeks, and the main target was
22 acquitted. So we had conducted a rather extensive

1 investigation of that one. We took it to trial and
2 the lead target was acquitted.

3 Q This was the investigation and trial in the
4 late 1980s and possibly 1990?

5 A Yes.

6 Q And so was one factor that the Little Rock
7 field office considered in determining which
8 institutions it wanted to apply its resources to
9 whether or not there had already been an
10 investigation and trial relating to that institution?

11 A That was a very important factor.

12 Q And that is why in late 1991 or early 1992,
13 Mr. Irons, on behalf of your office, told the RTC
14 that you were more interested in referrals relating
15 to institutions where there had not been a previous
16 referral than you were in referrals relating to
17 institutions that had already been the subject of
18 prior referrals?

19 A Precisely.

20 Q Had the First Federal or Savers banks been
21 the subject of prior referrals as of the summer of
22 1992?

1 A I don't believe so, because if they had
2 then we would have had reason to be investigating. I
3 think we just gathered some information indicating
4 that there was possibly fraud there.

5 Q Now, how much communication was there
6 between the FBI Little Rock field office and the
7 applicable RTC field office relating to which
8 institutions the RTC would send referrals over to the
9 FBI on?

10 A Certainly we indicated to them, like in
11 Savers and Federal, that we thought based on the
12 information we had about possible fraud or illegality
13 and the amount, that we thought that those were two
14 that we would like to take a look at, if they would
15 review them and make the referral, so we did feed
16 that information to them and indicate -- give them an
17 indication that -- there's a tremendous amount of
18 documents involved in any of these failures, as you
19 can imagine, so for us to be able to give some
20 information based on what we have and so forth that
21 these are probably one or two or three or four that
22 you would concentrate on, we did that, and we did

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1 that in Savers and Federal.

2 Q How often would there be contact on the
3 subject of which institutions to focus on between
4 officials of the Little Rock FBI field office and
5 officials of the RTC field office?

6 A There was fairly regular contact,
7 particularly at the supervisory level.

8 Q And that would be Mr. Irons?

9 A Mr. Irons and his counterpart at the RTC.

10 Q And that was principally --

11 A The one for our area I believe was
12 Ms. Lewis.

13 Q Jean Lewis?

14 A Yes.

15 Q And that was when she was in the Kansas
16 City office of the RTC?

17 A Yes.

18 Q Do you have any sense of how often on
19 average Mr. Irons spoke with Ms. Lewis about
20 priorities and other issues related to financial
21 failures?

22 A It would be conjecture but I would believe

1 at least once a month.

2 Q And this would be during the period of
3 1990, '91, '92?

4 A Right.

5 Q I'm going to show you another document and
6 unfortunately I'm not allowed to make a copy of it
7 because this is a so-called highly confidential
8 document, so I'm going to -- if you don't mind, I'm
9 going to walk around and look over your shoulder
10 while you look at it so I can ask you some
11 questions.

12 But for the record, it's what has two
13 numbers on it. Comes from the RTC. One number is
14 004594. The other is S/AT 0050. And it's a
15 December 11, 1991 memorandum from Jean Brennan, who
16 just for your information, that's the same person as
17 Jean Lewis, just with a different -- either with or
18 without her married name, to Clark Walton, subject
19 being "referral schedule." Why don't you just take a
20 moment to read that.

21 (Witness reviewed the document.)

22 Have you ever seen that document before?

1 A I don't recall specifically but that's
2 basically a list of the banks that we prioritized as
3 far as we would like to have a referral.

4 Q Who is Clark Walton? Do you know?

5 A No, I don't recall.

6 Q Do you know whether he's an RTC official?

7 A From this memo, it would appear he is.

8 Q He's not an FBI official?

9 A No, no.

10 Q Now, you just mentioned a minute ago that
11 this appears to be the priority list of banks that I
12 think you said that you had agreed on. Did you mean
13 by that that the FBI Little Rock office had agreed
14 with the RTC field office that this would be the list
15 of priorities, or do you think this is an RTC list of
16 priorities based on guidance from your office?

17 A That's the way I would perceive it, right,
18 that it's a list based on their conversations with
19 somebody from our office, and/or perhaps the U.S.
20 Attorney's office. I'm sure they were talking to
21 them too.

22 Q Are you familiar with the banks on this

1 list?

2 A Yes. Savers is on the list. It's number
3 one. Number 2109. Capital is another, listed with
4 an asterisk. First Federal, they are all banks which
5 had failed that we could possibly have some interest
6 within the state of Arkansas.

7 Q Now, directly to the right of each bank,
8 there is either a number or an asterisk; is that
9 right?

10 A Right.

11 Q For example, Paragould has the number 5,
12 Savers has the number 1, First American has a number
13 3, and actually all the rest of the banks have
14 asterisks; is that right?

15 A That's correct.

16 Q Do you know what those numbers and
17 asterisks refer to?

18 A No, I do not.

19 Q There also are two dates on this document
20 for each bank. From the context of this, can you
21 tell us what those dates refer to?

22 MR. GICALE: You know, I guess I just would

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1 object to this just to the extent that -- as long as
2 he is asked what he knows. I mean if he's reading
3 from the document and then he's going to tell you, I
4 guess I just would like him to state for the record
5 if he does know, what is the source of his knowledge
6 in terms of those dates.

7 BY MR. KRAVITZ:

8 Q I think what Lou is saying --

9 A It would appear that this is their
10 prioritization of the rankings based on their
11 discussions with FBI, primarily with the FBI, so --
12 and Savers is second with a number one beside it, and
13 I believe the first column is --

14 MR. GICALE: Again, I just would object. I
15 just don't want any speculation on his part. I think
16 speculation would be inappropriate. If he knows,
17 fine. If he doesn't, the document speaks for
18 itself.

19 THE WITNESS: Could you ask me the question
20 again, please?

21 BY MR. KRAVITZ:

22 Q I asked you if in context you could tell

1 what the dates on the first page of that document
2 meant. I'm not -- I'm not asking you just to take a
3 wild guess or speculation, but if, say, you're
4 familiar with time periods in which reviews were
5 scheduled to take place and based on that knowledge
6 and your review of the rest of this document you can
7 tell us what you think this means, you certainly are
8 free to testify to that.

9 MR. GICALE: Again, Mr. Pettus, we don't
10 want you to speculate. If you know it, fine. If you
11 don't know it --

12 THE WITNESS: Based on the memorandum, she
13 is upgrading the priority of Savers and Capital
14 particularly based on our request and hopefully they
15 would be referred to us by the end of January for
16 Savers and by the end of February for Capital.

17 MR. GICALE: Mr. Pettus, are you just
18 reading from that document?

19 THE WITNESS: Right.

20 MR. GICALE: Could you just testify to your
21 own knowledge?

22 MR. KRAVITZ: Wait, Lou --

1 MR. SGRO: The question is -- I don't care
2 whether the question is posed or not, but the
3 question as posed was in context, which to me means
4 reviewing the memorandum. If you guys disagree about
5 whether the question should be asked or not, don't
6 direct it to the witness. You guys decide how you
7 want the questions asked and he'll answer.

8 MR. KRAVITZ: I thought he answered it
9 fine.

10 MR. GICALE: He was reading from the
11 document, and I don't think it was responsive to the
12 question.

13 MR. SGRO: Again, as the question was asked
14 I think it was responsive. If there's a problem with
15 the question, the witness will answer the question as
16 it's asked and the two of you can determine whether
17 the question should be asked.

18 BY MR. KRAVITZ:

19 Q Let me rephrase the question this way. Am
20 I correct that there are two columns of dates on this
21 document?

22 A Correct, yes, sir.

1 Q Is it your understanding that as for each
2 financial institution listed here, the first date
3 listed is the beginning of a period in which the RTC
4 is expected to begin a criminal investigation and the
5 second date is the date on which the RTC is expected
6 to complete that preliminary -- that criminal
7 investigation and either make or not make a referral
8 to the government?

9 A That's correct.

10 Q And what does this document indicate as the
11 date on which the RTC is to conduct a criminal
12 investigation or begin conducting a criminal
13 investigation in the Madison case?

14 A 10-1 of '92.

15 MR. GICALE: Just at this juncture, are you
16 going to -- off the record.

17 (Discussion off the record.)

18 BY MR. KRAVITZ:

19 Q Let's back up. Were you aware in late 1991
20 that the RTC -- the Kansas City office of the RTC had
21 a schedule for its own criminal review of failed
22 financial institutions within its region?

1 A Yes.

2 Q And is it that schedule that these dates on
3 this document, S/AT 0050, refer to, to your
4 knowledge?

5 A I believe so.

6 Q And it's your understanding -- is it your
7 understanding that after your conversation -- or
8 after Mr. Irons's conversation with Ms. Lewis, for
9 example, the date for the RTC investigation into the
10 Savers failure was advanced to January of 1992?

11 A Yes.

12 Q Okay. And is it your understanding that
13 following Mr. Irons's conversation with Ms. Lewis,
14 that the RTC's criminal investigation of First
15 Federal was advanced to March of 1992?

16 A Yes.

17 Q And I'm just -- just so we're clear, that's
18 First Federal of Little Rock as opposed to First
19 Federal of Fayetteville?

20 A That's correct.

21 Q Now, on the second page of this memorandum
22 from Jean Brennan, otherwise known to us as I think

1 Jean Lewis, to Clark Walton dated December 11, 1991,
2 Ms. Brennan states the following: "I have attempted
3 to schedule the investigations so that if there is
4 more than one association in a specific city, the
5 investigations will be conducted back to back,
6 looking for evidence of common players. Other than
7 that, I have prioritized based on joint investigative
8 efforts with the FBI and information offered by the
9 civil investigators as to how 'dirty' any of their
10 specific institutions appear to be."

11 Is that consistent with your understanding
12 of how the priorities were to be set, both by the FBI
13 and by the RTC in terms of prioritizing among the
14 various institutions?

15 A Basically.

16 Q And do you know what Ms. Lewis meant when
17 she said how dirty any of the specific institutions
18 appear to be? I mean is that consistent with when
19 you said that you looked to see how much fraud there
20 is?

21 A Right, independent information from us
22 indicating fraud in a certain institution.

1 Q So based on that prioritization, Ms. Lewis,
2 among the other factors that you mentioned earlier,
3 Ms. Lewis had placed the Madison Bank down number 11
4 at 13 banks that were scheduled for investigation; is
5 that correct?

6 A That's correct.

7 Q To your knowledge, as of September 1, 1992
8 or September 2, 1992, whatever the day was that your
9 office received the criminal referral in the Madison
10 case from Ms. Lewis, had your office received
11 criminal referrals in any of the other matters,
12 regarding any of the other banks on this list?

13 A I don't recall. I know that our two main
14 ones, Savers and First Federal, we had not, which
15 were our top priorities.

16 Q And that's the case even though --

17 A I would have to refresh my memory on the
18 others.

19 Q But certainly as to Savers and First
20 Federal, your understanding, corroborated by this
21 memo from Jean Lewis or Jean Brennan to Clark Walton,
22 was that at least as of the end of 1991, Savers and

1 First Federal cases were to be investigated by the
2 RTC before the Madison case?

3 A That's correct.

4 MR. KRAVITZ: Off the record.

5 (Discussion off the record.)

6 EXAMINATION

7 BY MR. GICALE:

8 Q Mr. Pettus, now you've been asked a series
9 of questions with respect to this document marked as
10 004594.

11 Now, do you have any independent
12 recollection of the dates that are referred to in
13 this exhibit?

14 A Well, I know for certain that Savers and
15 First Federal had not been referred as of the dates
16 that was indicated there.

17 Q You've previously testified that Savers and
18 First Federal were priorities and they were banks
19 that your office felt some attention should be given
20 to; correct?

21 A Should be expedited, if possible.

22 Q Okay. But with respect to the dates that

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1 are in these columns after these bank names, I mean
2 do you have any independent recollection of these
3 dates?

4 A No, I believe that's their document.

5 Q That's their document; correct?

6 A Right.

7 Q So when you indicate that these -- that
8 these are dates when something had to be done or due
9 dates and things of that sort, that's just based on
10 your review of this memo today, not any independent
11 recollection of your own; is that correct?

12 A Well, that's correct, but I know -- I'm
13 certain Mr. Irons had consultations with them and
14 discussions, and that was, in part, the reason for
15 that list.

16 Q Okay. You know Mr. Irons and Ms. Lewis,
17 then her name was Jean Brennan, did have discussions
18 about the priorities?

19 A Oh, absolutely.

20 Q But in terms of any independent knowledge
21 as to an agreement as to dates, you don't have any
22 independent recollection of that?

1 A No.

2 Q You presume they agreed on some dates?

3 MR. KRAVITZ: I think he said he knows they
4 agreed on a prioritization. I think you're asking
5 him whether he remembers specific dates.

6 MR. GICALE: I asked him about dates.

7 THE WITNESS: I don't recall those specific
8 dates that is in that memo. That's their memo so I
9 don't -- I don't recall the specific dates.

10 BY MR. GICALE:

11 Q By their memo, you're saying the RTC's
12 memo?

13 A Right. I assume that's their memo, right.

14 Q So the only thing you can say with respect
15 to your own independent recollection is that there
16 was this prioritization with respect to banks?

17 A And we were vitally interested in getting
18 referrals in Savers and First Federal.

19 MR. GICALE: Thank you.

20 EXAMINATION

21 BY MR. KRAVITZ:

22 Q Did there come a time after the end of 1991

1 when you learned that the RTC had advanced its
2 scheduled criminal review in the Madison case?

3 A Rephrase that again.

4 Q Well, you've already testified at least
5 your interpretation of this RTC memo written by Jean
6 Lewis in December 1991 was that the Madison -- the
7 RTC's Madison investigation was at least at that time
8 scheduled to begin on October 1, 1992?

9 A Correct.

10 Q Did you ever learn -- well, did you learn
11 before October 1, 1992 that the RTC had in fact begun
12 its investigation into Madison sooner than October 1,
13 1992?

14 A Well, yes, because -- certainly, because in
15 August we got in that they were referring to and I
16 believe we actually got it on September 1 or
17 September 2, but in August they did pass on word that
18 they were referring it, right.

19 Q Now, let me direct your attention again to
20 the chronology, pages 1526 through 1528, from the FBI
21 production that I think you have sitting in front of
22 you. On the first page, page 1526, if you will look

1 down to the third entry where on the left it says
2 "within two weeks," presumably that's within two
3 weeks of some event in March of 1992, which is the
4 second entry.

5 A Oh, okay, I gotcha.

6 Q So the third entry reads "Jean Lewis of RTC
7 contacted FBI Little Rock (Aaron) --

8 A That was the case agent initially on
9 Madison Guaranty, Gary Aaron.

10 Q -- "to review our investigation. She also
11 examined the records of Madison which were stored in
12 the outlet mall on I-30, along with records of most
13 of the other failed Arkansas S&Ls (RTC custody).
14 Lewis advised Irons she was called off her work on
15 the Savers/First Federal referral to work on the
16 allegations in the news article. Either RTC in
17 Washington or regional RTC headquarters in Kansas
18 City had seen the article and asked if RTC had the
19 records of Madison. When they learned they did, they
20 wanted the Clinton angle investigated to make sure
21 they hadn't missed something."

22 Now, were you made aware in March 1992 that

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1 Jean Lewis had contacted your office in Little Rock
2 to discuss beginning a new investigation into Madison
3 at that time?

4 A What date was this?

5 Q Well, our understanding is that there was a
6 newspaper article in The New York Times on March 8,
7 1992. And that, I believe, is the item referred to
8 in the second entry on this chronology where it says
9 "March?," but we have other information that
10 indicates that was March 8, 1992, so this would be
11 within two weeks of March 8, 1992.

12 A I don't specifically recall that, but I've
13 got to believe that the contact would have been
14 Mr. Irons, and he probably would have mentioned
15 that -- I'm certain he would have mentioned that to
16 me.

17 Q You were aware by March of 1992 that
18 Governor Clinton was running for President?

19 A Yes.

20 Q Do you remember Mr. Irons saying anything
21 to you about the RTC's desire to have the "Clinton
22 angle investigated to make sure they hadn't missed

1 something"?

2 A I don't recall that specifically.

3 Q Did Mr. Irons back in the spring of 1992
4 express any concerns to you that Jean Lewis had been
5 pulled off the Savers and First Federal cases, which
6 I think you've already testified were your top
7 priorities, in order to work on another case that was
8 a lower priority for your office?

9 A I just don't recall.

10 Q You don't remember one way or the other?

11 A I don't remember one way or the other.

12 Q Is it accurate to say, then, that you have
13 no recollection of being consulted by the RTC before
14 the RTC pulled Ms. Lewis off the Savers and First
15 Federal cases and put her on the Madison
16 investigation?

17 A Contacted personally?

18 Q Right.

19 A No, I don't recall.

20 Q To your knowledge, was your office
21 consulted at all on that question of the RTC's
22 resources?

1 A I'm fairly certain we weren't.

2 Q Now, the next entry on this chronology,
3 still on page 1526, the time is listed here as
4 "within next few weeks." So presumably this is
5 either still March 1992 or April 1992, and it reads
6 "FBI (Irons) contacted Lewis's supervisor to ask if
7 they had discovered something that looked like it
8 would be basis for referral and Clark Walton said
9 yes."

10 Do you know anything about what that refers
11 to?

12 A No.

13 Q The next entry on page 1526 reads "over
14 next few months, RTC (Lewis) apparently advised
15 several AUSAs and FBI employees of what she was
16 working on."

17 Do you have any recollection of being
18 advised by Ms. Lewis or by anyone in your office that
19 Ms. Lewis had advised them in the late spring/early
20 summer of 1992 that Ms. Lewis was working on Madison?

21 A Again, I don't recall specifically, but I'm
22 certain some of this import Mr. Irons would have

1 advised me.

2 Q Was there anyone in the RTC Kansas City
3 field office back in this time period, 1992, that you
4 had communications with?

5 A I believe somebody above Ms. Lewis did come
6 through, but I don't know when it was or how often.

7 Q You mean actually came to your office?

8 A Right, as a courtesy and how things were
9 going, of that type, more or less at my level. And
10 Irons would have been in on the meeting certainly, or
11 if he wasn't there, the ASAC. I believe somebody did
12 come through, but I don't recall who it was or when
13 it was.

14 Q Do you recognize the name Lee Ausen,
15 A-u-s-e-n?

16 A No.

17 Q Or Richard Iorio?

18 A I do recognize that, but again, that's been
19 in the papers and it was on a number of memorandums,
20 so I was aware of who Iorio was. I cannot say
21 positively he came through, but I believe he did.

22 Q But you don't have any recollection of

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1 speaking with any of Ms. Lewis's supervisors in the
2 spring or summer of 1992 about the RTC's decision to
3 put Ms. Lewis on the Madison case instead of the
4 Savers and First Federal cases?

5 A No.

6 Q Did you know anything about Jean Lewis when
7 you were in charge of the FBI Little Rock field
8 office, other than what her position was?

9 A No. I was aware that she covered our area
10 and she was in the office, and I may or may not have
11 met her casually one time, but that was the extent.

12 Q Did you ever discuss Ms. Lewis and what she
13 was like with Mr. Irons or anyone else in your
14 office?

15 A We probably did. I think when we were
16 talking about someone who is handling the case from
17 another agency, I don't think it's unusual that we
18 would have discussed the individual.

19 Q What do you remember about your
20 conversations with Mr. Irons or others in your office
21 about Jean Lewis?

22 MR. GICALE: I object to the relevance

1 unless it's with respect to her handling of this
2 case.

3 MR. KRAVITZ: Your objection is noted.

4 MS. SIMONTON: Go ahead and answer.

5 THE WITNESS: Well --

6 MR. GICALE: Well, I mean the scope of this
7 is the handling of these referrals, and this is only
8 relevant, and I don't think he should be answering
9 this question unless it's related to her performance
10 or something that affects that.

11 MR. KRAVITZ: Lou, I mean if he has any
12 information about discussions about her reliability,
13 her credibility, her --

14 MR. GICALE: Ask him those questions,
15 then.

16 MR. KRAVITZ: Her performance on this or
17 any other case, information that she was leaking
18 information to the press, information --

19 MR. GICALE: Then ask him those questions
20 instead --

21 MR. KRAVITZ: Lou, excuse me, excuse me --

22 MR. GICALE: But --

1 MR. KRAVITZ: Excuse me, I am running this
2 part of the deposition.

3 MR. GICALE: No, you're not running the
4 deposition.

5 MR. KRAVITZ: I am running this part of the
6 deposition, and if I want to ask --

7 MR. GICALE: And there's an objection.

8 MR. KRAVITZ: Lou, let me finish and then
9 I'll let you speak, but this is really out of line.
10 If I want to ask open-ended questions that allow the
11 witness to answer in any way, that is -- and this is
12 so clearly relevant, I'm not required to ask a more
13 specific question.

14 MR. GICALE: And if I need to make an
15 objection, I can make an objection and the witness is
16 instructed not to answer until we clarify that. It's
17 not relevant. It isn't -- it's too broad brush to
18 say did you talk about them in any respect.

19 Now, you cited a list of things, for
20 instance, her trustworthiness, credibility, those
21 kinds of things. I think that those would be
22 relevant with respect to this, but just to say did

1 you talk about her in any respect, I mean I think
2 that that's too broad. I think it's beyond the scope
3 of this, and I just don't think that it's a proper
4 question for him to answer.

5 So I mean if you want --

6 MR. KRAVITZ: Let me rephrase the question
7 this way.

8 BY MR. KRAVITZ:

9 Q I think, Mr. Pettus, from our little spat
10 here you have some idea of what types of issues I'm
11 interested in hearing about. But I'm going to repeat
12 the question as a broad one, and that is what do you
13 remember about the discussions you had with Mr. Irons
14 and others in your office regarding Ms. Lewis?

15 A My recollection is that they -- as an
16 investigator or someone who was reviewing facts, that
17 there were others who were more professional and did
18 a better job.

19 Q And who told you that view?

20 A This would have come from discussions with
21 Irons and people on his squad who were aware of the
22 caliber of her referrals and the job that she did.

1 Q What was it -- well, according to Mr. Irons
2 and others on his squad in your office, what was it
3 about Ms. Lewis's work or personality that they
4 viewed as less professional than the work of others
5 in the RTC office?

6 A I would feel better if you'd ask them on
7 that.

8 Q Well, let me just ask you this way. We
9 certainly will if we have an opportunity. But what
10 do you remember from the conversations that you
11 participated in with Mr. Irons and others in your
12 office about why it was that they viewed Ms. Lewis as
13 less professional than others in the RTC field
14 office?

15 A I think they had a question sometimes about
16 her objectivity.

17 Q And in what context?

18 A Focusing in on an area. We were definitely
19 interested, as I said earlier, in the two major
20 failures, Savers and First Federal, and I believe
21 there was a perception that she kind of did her own
22 thing.

1 Q You mean that Ms. Lewis on her own moved
2 over to the Madison case from the two cases that your
3 office wanted her to focus on?

4 A Yes.

5 Q That was a perception held by Mr. Irons and
6 others on Mr. Irons's staff in your office?

7 A That's my recollection.

8 Q Did you ever hear any conversation among
9 members of the FBI Little Rock field office about
10 Ms. Lewis's credibility, whether she told the truth?

11 A No, I don't believe so.

12 Q Did Mr. Irons ever indicate to you that he
13 was receiving pressure from Ms. Lewis at any point in
14 this whole process, pressure from Ms. Lewis to move
15 forward on the Madison case?

16 A I believe he got a call or two which he
17 related to me, wanting to know the status.

18 Q Was that at all unusual for an FBI agent in
19 Mr. Irons's position to receive calls from an RTC
20 investigator or was there something about these calls
21 that Mr. Irons perceived as unusual?

22 A I think that's something that better be

1 asked of Mr. Irons.

2 Q Again, we hope to get a chance to question
3 him, but I guess my question to you stands, based on
4 your conversation or conversations with Mr. Irons --

5 A My experience would indicate that most of
6 those should probably come from her superior to
7 either the ASAC or myself, a little different but not
8 totally out of the ordinary. It's a small office,
9 but it could be perceived as somewhat unusual.

10 Q For Jean Lewis to make the call to
11 Mr. Irons?

12 A Right.

13 Q Instead of having Jean Lewis's supervisor
14 make the call to you?

15 A Or the ASACs or U.S. Attorney.

16 Q So what you're saying is that may not have
17 been a unique situation but it's still unusual?

18 A It's a small office. I mean, typically
19 somebody above her would have made the call, but it's
20 not totally unusual. It's a small office.

21 Q Was it ever brought to your attention when
22 you were running the FBI office in Little Rock that

1 Ms. Lewis had spoken to the press about her work in
2 the Madison case?

3 A Now, is this -- what period?

4 Q Well, at any time before you left Little
5 Rock to go to Kansas City. So I guess the question
6 then spans the time up until New Year's of '93.

7 A I just don't recall. I know there was some
8 news reports later on, but I don't recall before I
9 left.

10 Q After you moved from Little Rock to Kansas
11 City, did you ever learn any information about
12 Ms. Lewis going to the press about the Madison case?

13 A Well, after I got to Kansas City, I'm
14 certain there was some news articles where it came
15 out.

16 Q Where it came out that Ms. Lewis had gone
17 to the press?

18 A After I got to Kansas City, I'm fairly
19 certain it was in the press that articles indicating
20 she probably had been talking to the press, but I
21 don't recall the specifics. That was strictly from
22 newspaper articles.

1 Q How high was the level of concern about
2 Ms. Lewis's professionalism among Mr. Irons and
3 others in your office in Little Rock, now back during
4 the pre-1993 period?

5 A I think it was a concern. Beyond that,
6 again, I think I would have Mr. Irons elaborate.

7 Q Well, what do you remember from Mr. Irons
8 or others as to how high the level of concern was?

9 A There was just some question about her
10 overall professionalism and her objectivity.

11 Q To your knowledge, was there any effort
12 made by any member of your staff to look into
13 Ms. Lewis's past as a criminal investigator, try to
14 find out what was going on with her?

15 A No.

16 Q I want to direct your attention back to the
17 same document that you've been looking at for a
18 while, FBI 1526 through 1528, and ask you to look
19 down at the last entry on the first page, which is
20 listed as "mid-August 1992." And it reads as
21 follows: "Lewis advised FBI the referral was almost
22 complete. Her superiors gave her a deadline 8-31-92

1 without fail. She advised she gave up a job
2 opportunity in Washington in order to complete the
3 referral, noting she might change the course of
4 history."

5 Now, do you remember being informed of the
6 information included in the entry I just read?

7 A I remember the information, but I don't
8 know when I got it.

9 Q What do you remember about being told that
10 Ms. Lewis had said that she had given up "a job
11 opportunity in Washington in order to complete the
12 referral, noting she might change the course of
13 history"? I mean, did anyone tell you that Ms. Lewis
14 actually said that?

15 A I recall that type of comment. I don't
16 exactly remember when or where.

17 Q Is that the kind of remark that is
18 consistent with the concerns that people in your
19 office had regarding Ms. Lewis's objectivity?

20 A I would say so.

21 Q Do you know who reported a remark similar
22 to this as having been made by Ms. Lewis, who

1 reported that to you?

2 A Again, I believe it would have been Irons.

3 Q So when this says "Lewis advised the FBI,"
4 the contact probably was to Mr. Irons?

5 A Yes, yes.

6 Q Why don't you close up that document but
7 just keep it there because I think we're going to
8 need it again. That's a big document.

9 I'm going to give you another one which is
10 marked FBI 1529 through FBI 1533. It's actually a
11 document that you were shown previously when
12 Mr. Gicale was asking you questions. Actually, it
13 may have had different Bates numbers, I'm not sure,
14 but I think it's the same document.

15 This is the Airtel dated August 26, 1992
16 from the SAC Little Rock to the director of the FBI;
17 is that correct?

18 A Yes, sir, that's correct.

19 Q Now, what is the difference between an
20 Airtel and a teletype?

21 A An Airtel is a priority over a memorandum
22 or a letter, but it still goes through the regular

1 mail. A teletype is more expedited and higher
2 priority that goes out over a teletype machine.

3 Q A teletype gets there immediately, like a
4 fax?

5 A Within an hour or two, just like a fax,
6 precisely.

7 Q So obviously an Airtel is of less --

8 A Priority but still is priority mail, but it
9 goes through regular mail, overnight.

10 Q Now, I want to direct your attention to the
11 latter half of the paragraph on the first page. I
12 think this may help refresh your memory as to one of
13 the subjects we were talking about previously as to
14 how the RTC had actually set its order of priorities
15 for its review of certain failed institutions in your
16 region.

17 A Right.

18 Q And this reads, I'm starting halfway down
19 the first page, "RTC had previously projected making
20 referrals on the dozen failed institutions over a
21 two-year period to end in 1994. At the request of
22 Little Rock, RTC intended to address the institutions

1 in the order chosen by the Bureau. The order
2 requested from RTC was derived by projecting manpower
3 availability in headquarters and resident agencies.
4 The closing of the Tulsa RTC office, layoffs of some
5 of its personnel and transfer of the remaining
6 employees have all negatively affected timely receipt
7 of new referrals and" I think that says "adversely
8 influenced Little Rock's ability to fully utilize its
9 dedicated FIF resources during the past nine
10 months."

11 Now, does that refresh your memory as to
12 what the FBI Little Rock -- Little Rock field
13 office's involvement was in terms of the RTC's
14 setting of its priorities and what institutions it
15 would focus its resources on?

16 A Yes. This would seem to indicate that that
17 list was prioritized in order.

18 Q Now, just so we're clear, what you're
19 saying is that this document, FBI 1529, the 8-26-92
20 Airtel from you to the FBI director, seems to
21 indicate that the list of 12 institutions, or 11
22 institutions that we were looking at previously, that

1 RTC memo from Jean Lewis to Clark Walton, that that
2 list was set according to the FBI's preferences?

3 A That's correct.

4 Q Now, is this -- it says from SAC. Was this
5 actually from you or is this something that would
6 have been written --

7 A It always goes from the SAC.

8 Q I understand that.

9 A So I can't tell you whether I signed that
10 or not, but I was aware of it.

11 Q And you believe that this memo, FBI 1529,
12 to be accurate when it indicates that the RTC's
13 priority list relating to failed financial
14 institutions in your region was actually set
15 according to the FBI's wishes?

16 A That's correct, and the initials down
17 there, SDI, is Steven Irons. He would be the one who
18 dictated it.

19 Q And you're referring to the bottom
20 left-hand corner of the first page?

21 A Right above the 4, right, that's correct.

22 Q So that indicates that Mr. Irons at least

1 drafted this document?

2 A That's correct. That's correct.

3 Q I'll take that one back from you. Now --
4 actually, tell me if you need to see it again. This
5 document refers to -- this document we were just
6 looking at refers to manpower shortages in the RTC
7 offices, specifically one of the offices, the closing
8 of the Tulsa RTC office and layoffs of some of its
9 personnel in other RTC offices. Was that an issue
10 that you and others at the FBI were aware of in terms
11 of setting priorities for the RTC; in other words,
12 their own person power shortages?

13 A I'm sure the cutbacks came up in our
14 discussions. Sure we would be aware of that.

15 Q Is it accurate to say that the manpower
16 shortages at the RTC made prioritization within the
17 RTC even more important?

18 A Yes.

19 Q Now, you've testified previously that on
20 September 2, 1992, your office in Little Rock
21 received the criminal referral C0004 in the Madison
22 case from the RTC; is that correct?

1 A I believe that's the right name.

2 Q And I believe your testimony was that the
3 copy of the referral that was received in your office
4 did not have any of the exhibits to the referral?

5 A That's correct, they went to the U.S.
6 Attorney's office.

7 Q What is the general practice in terms of
8 the making of referrals, criminal referrals, in RTC
9 cases in terms of attaching or not attaching
10 exhibits, or at least what was the general practice
11 as of 1992?

12 A This was -- my recollection is that this
13 was a voluminous number of exhibits, that typically
14 we would probably get them both if there wasn't too
15 much of a volume, but then again -- this is strictly
16 conjecture, but again, I would assume based on
17 experience that they sent this to the U.S. Attorney's
18 office knowing that there had been a full-fledged
19 trial and acquittal and it was important that the
20 U.S. Attorney be on track and authorize an opening of
21 an investigation. That would be my assessment as to
22 why they sent all the exhibits to the U.S. Attorney's

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1 office, but --

2 Q I'm sorry. Say that again. What you're
3 saying is your understanding as to why the exhibits
4 were sent to the U.S. Attorney's office as opposed
5 to --

6 A As opposed to not being sent both places.

7 Q And the reason being that the U.S.
8 Attorney's office needed to be able to look at all of
9 the allegations in greater detail?

10 A Right, and make a determination as to
11 whether or not to reopen the investigation.

12 Q And that was because there were so many
13 factors that in other circumstances would have
14 militated against a subsequent investigation, the
15 prior trial?

16 A Right, right.

17 Q The fact that Mr. McDougal was ill?

18 A Right.

19 Q The fact that Mr. McDougal had actually
20 been acquitted?

21 A Right. But I'm not certain. I don't
22 really recall anybody saying that, but my assessment

1 of the situation and knowing in general how they go,
2 I think typically if there wasn't that many exhibits,
3 we would both get it, but because this was so
4 voluminous and they were aware of the previous trial
5 and background on this, that's why they sent it to
6 the U.S. Attorney. I believe that's why they did it.

7 Q Now, you were notified on September 2, 1992
8 by Mr. Irons that the referral had arrived in your
9 office?

10 A Right.

11 Q What was your reaction when you learned
12 that this referral that you were receiving was in the
13 Madison case and not in the Savers or First Federal
14 case?

15 A Well, I was -- my first concern was that
16 the FBI analysts handle this in an objective and
17 totally fair manner, realizing the timing was crucial
18 and if any type of investigation was initiated, if it
19 become public, that it could -- we had to maintain
20 our absolute objectivity and fairness.

21 And this is a different situation. It's
22 not a typical referral. It's a referral where we

1 again had had what I thought was a thorough
2 investigation, up to a two-week trial and the main
3 target was acquitted. And now to reopen this when we
4 were asking for two other cases which we had not done
5 that -- done basically any investigation on with far
6 greater losses and more culpability, particularly in
7 the time period that we had to be very careful,
8 objective and fair and that everything had to be
9 cleared certainly with the United States Attorneys
10 office before we did anything.

11 Q Did you think it was appropriate for the
12 RTC to be sending criminal referral in the Madison
13 case under those circumstances you've just outlined
14 as opposed to criminal referrals in the other two
15 cases you had greater interest in, Savers and First
16 Federal?

17 A Well, certainly they have a right to refer
18 it, but certainly once we got it, it was incumbent
19 upon us to handle it in a very fair and objective
20 manner to all the parties involved who could be
21 harmed or reputations hindered.

22 Q Did your office ever initiate its own

1 investigations into failed S&Ls, or did you always
2 wait for referrals from the RTC?

3 A I'd say in general we waited for the
4 referrals. And there might be -- I'm not saying
5 there isn't exceptions, obviously, if somebody comes
6 in and says A, B and C did this and it violated the
7 law, but what we did was gather information that were
8 indicators of violations, and that's why we, I'm
9 sure, had First Federal and Savers at the top. There
10 were indicators of a possible fraud and criminal
11 violations.

12 Now, that doesn't say that if we had very
13 specific information, that after consultation with
14 the U.S. Attorney's office, we would open the case,
15 but again we would have to get the records from the
16 RTC. They had the records so there would be
17 consultation.

18 Q Was there any discussion among any of the
19 officials in your office in Little Rock following the
20 receipt of the criminal referral in the Madison case
21 on September 2 about suspicions that the referral was
22 politically motivated?

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1 A Well, we have to deal with facts, and since
2 it come in, that's the way we handled it.

3 Q But were there any discussions among
4 officials at your office about suspicions that they
5 may have had that Ms. Lewis and possibly others at
6 the RTC had had political motivations in sending the
7 criminal referral at that time in the Madison case?

8 A That's why we had to make sure everything
9 was fair and objective.

10 Q So the answer is yes?

11 A We had to cover -- we had to make sure that
12 we were totally fair and objective, regardless of
13 motives.

14 Q Well, I mean it's obviously in the
15 documents that Mr. Banks subsequently had some
16 concerns about political motivations.

17 A Right.

18 Q What I'm trying to get at is whether before
19 Mr. Banks entered the picture, as far as your office
20 was concerned, whether anyone in your office
21 articulated concerns that the sending of the referral
22 in the Madison case in the beginning of September

1 1992 was at least in part politically motivated.

2 A In trying to insure that we were fair and
3 objective, I mean certainly that was a factor that
4 was considered.

5 Q Now, who was it who articulated concerns
6 that the sending of the referral in the Madison case
7 in September 1992 was politically motivated?

8 A Well, I'm not saying we said it was
9 politically motivated.

10 Q Well, who expressed concerns that it might
11 be?

12 A We considered that would be a factor, and
13 again that would be the people that worked on the
14 case, mainly Irons, Whitehead and myself.

15 Q Now, what were -- what was your thought
16 process as you were thinking about whether it was
17 politically motivated for Ms. Lewis to have sent the
18 referral in the Madison case at that time,
19 September 2, 1992?

20 A I think I had -- I thought I had to
21 approach it that we have got the referral, we will
22 act in total objective -- be totally objective and

1 fair from this point out. We've got it now. We've
2 got to take action. It's ours. There's been a
3 legitimate referral, and we'll handle it as fair and
4 objective as we can, without regard as to why it was
5 referred or any of those factors, which is strictly
6 conjecture.

7 Q Well, let me see if I can get at that. Do
8 you remember the entry that we were looking at before
9 about Ms. Lewis apparently telling someone in your
10 office that "she had given up a job opportunity in
11 Washington in order to complete the referral, noting
12 that she might change the course of history"?

13 A Right.

14 Q You know, it obviously may or may not be
15 total conjecture, but what did you think? Did you
16 think that it was politically motivated for Ms. Lewis
17 to send over a criminal referral naming the Clintons
18 as witnesses on September 2, 1992, two months before
19 the presidential election?

20 A Well, it's a possibility, but again, it's a
21 legitimate referral, and our point now is we've got
22 to act on it. We've got a referral. So --

1 Q I'm just asking you what you thought.
2 MR. GICALE: You know, I would object.
3 He's answered this question different ways three
4 different times, and we've covered it and you're --
5 he's answered it.

6 BY MR. KRAVITZ:

7 Q You can answer.

8 MR. GICALE: No, he's --

9 MR. KRAVITZ: Lou.

10 MR. GICALE: I've objected, raised an
11 objection as to relevance.

12 MR. KRAVITZ: This is the most ridiculous
13 thing I've ever heard in my life.

14 BY MR. KRAVITZ:

15 Q Do you want me to rephrase the question?

16 A Rephrase the question.

17 Q The question is when the referral was
18 received in your office on September 2, 1992 and you
19 had some time to think about it, did you think that
20 it was politically -- that it had been sent over due
21 at least in part to political motivations?

22 A Again, we wanted to be totally fair and

1 objective, but we certainly had to consider the
2 possibility that there could have been a motive. And
3 the comments of this certainly caused the factor to
4 be considered.

5 Q There were discussions in your office among
6 top officials about the concern that the referral was
7 politically motivated?

8 A That that's a possibility, that's something
9 we have to keep in mind when we're planning what
10 we're going to do, to be fair and objective during
11 this crucial period.

12 Q Did you ever have any conversations about
13 your concerns of political motivation with anyone
14 outside the Little Rock FBI field office?

15 A Well, certainly I'm sure we discussed it
16 with the U.S. Attorney, the possibility.

17 Q Mr. Banks?

18 A Yes.

19 Q How about with anyone at the RTC?

20 A I don't believe so.

21 Q If you could look on the chronology, the
22 second page, page FBI 1527, you will see that there

1 is one entry, September 2, '92 which indicates that
2 the referral was received from the RTC and that the
3 U.S. Attorney received his copy on the same day, and
4 then the next entry, which says "next day or so," so
5 presumably that's September 3 or 4, 1992, indicates
6 "spoke to USA, who wanted us to take no action until
7 we had time to discuss it due to sensitivity
8 (previous conversations that it was coming had
9 occurred)."

10 Was that you who spoke to the U.S. Attorney
11 on that day, September 3 or 4, 1992?

12 A It could have been. I just don't recall
13 specifically.

14 Q Do you remember learning from the U.S.
15 Attorney, either directly or indirectly, in early
16 September a day or two after receiving the referral
17 that Mr. Banks wanted your office to take no action
18 until you all had had time to discuss the case?

19 A Right.

20 Q You do remember that?

21 A Well, and I made sure of that, too, in
22 ours, that since we had had -- with the background of

1 the case and so forth, I made that clear in our
2 office that we didn't want to do anything until we
3 had the concurrence of the U.S. Attorney.

4 Q And was that due to concerns about the
5 possible political motivations of the referral and
6 its timing?

7 A Again, that's a factor, the fact that we
8 had the previous trial and the main target had been
9 acquitted, it's a whole spectrum of factors that
10 occur which is not a typical referral. The timing,
11 certainly, sure.

12 Q To your knowledge, were there statute of
13 limitation deadlines that were rapidly approaching in
14 the Madison case as of the time of the referral?

15 A There was some discussion in the -- I'm
16 sure in the September 23 conference about some
17 concerns about statute of limitations. I don't
18 exactly recall when it was. I thought it was in
19 early spring, but I don't recall the exact date. It
20 was discussed. Banks raised that, that he had
21 some -- and maybe Dodson too, that they had some
22 concerns about the statutes of limitations.

1 MR. KRAVITZ: Do you want to take a break?
2 We've been going for a long time.

3 MR. SGRO: He's got to go.

4 MR. KRAVITZ: Off the record.

5 (Recess.)

6 BY MR. KRAVITZ:

7 Q Back on the record. I want to direct your
8 attention again to page 1527, the second page of that
9 chronology. It indicates the last entry we spoke
10 about was the one the next day or so, which would be
11 September 3 or 4, 1992, and then following that, it
12 says "next few days RTC began to call and ask what
13 FBI was doing with the referral" and then the next
14 entry, 9-9-92, "RTC leaves phone message complaining
15 FBI returned calls" and "give status report."

16 Do you know what those entries refer to?

17 A Again, they would have been calling Irons
18 so --

19 Q "They" being the RTC?

20 A Right.

21 Q Specifically probably Ms. Lewis?

22 A Or someone at her level, yeah, probably

1 her.

2 Q Is that also unusual as you stated before
3 for someone at the RTC to be making several follow-up
4 calls within a week of a referral being sent over?

5 A Well, I'd say that it's not unusual to make
6 maybe one or two, but then generally somebody, a
7 supervisor or somebody, would call the U.S.
8 Attorney's office or the ASAC or higher in our
9 office.

10 Q So if there were more than one or two calls
11 from Ms. Lewis to Mr. Irons during that week
12 following the referral, that would have been unusual?

13 A Somewhat unusual, yes.

14 Q Do you remember any conversations or
15 discussions within your office about whether people
16 were feeling pressured by Ms. Lewis during that first
17 week in September 1992 to take quick action on the
18 Madison referral?

19 A Again, I'm sure that -- I'm fairly certain
20 that Irons would have mentioned it to either me or
21 the ASAC, and again, you know, we had talked to the
22 U.S. Attorney and we weren't going to take any action

1 until after we'd had an opportunity to discuss it
2 with them, but I'm sure Irons would have mentioned it
3 to either myself and/or Whitehead or both of us. I
4 don't recall the specifics, but I'm sure he would
5 have.

6 Q Mentioned to you that he had received more
7 than one or two telephone calls from Ms. Lewis?

8 A Right.

9 MR. GICALE: Is the answer you don't
10 recall?

11 THE WITNESS: I don't recall the specifics,
12 but knowing Irons, I'm sure he would have mentioned
13 it to one of us.

14 BY MR. KRAVITZ:

15 Q And then on the next entry, 9 --

16 A And again, I think I ought to get this on
17 the record. I don't know when I was in the office.
18 I traveled a lot, and when I was in the Bureau, the
19 committee and other things, and conferences and that
20 type of thing, so I'm not being -- I'm not giving
21 you -- I'm not sure I was there on this given day or
22 something like that, but I know that in general, I

1 would get -- when I would come back in, he's going to
2 give me an update, him or the ASAC, on the calls and
3 that type of thing, but this was of utmost priority
4 in the office, very sensitive case and one of the
5 highest priorities in the office.

6 Q The entry for 9-10-92 reads "RTC was
7 advised no decision by USA and FBI was not going to
8 be in a position to give status reports when he
9 did."

10 Do you know what that means?

11 A Obviously I know what "no decision" -- I
12 mean "no decision," I'm sure they mean by doing any
13 investigation or taking any action on the referral.
14 Looks to me like something is probably left out
15 there.

16 Q Does that -- do you think that this refers
17 to a message that was sent from your office, the
18 Little Rock FBI field office, to the RTC telling them
19 that they were not going to get status reports and
20 perhaps they shouldn't call so much?

21 A Well, I'm sure that there's no decision yet
22 by the USA or the FBI, and basically we're not going

1 to do anything until we have some concurrence of the
2 U.S. Attorney.

3 Q Is this communication that happened on
4 September 10, 1992 from your office to the RTC Kansas
5 City field office, was this an effort to get the
6 Kansas City field office to lay off?

7 A Probably. Again, I just can't say, but it
8 probably --

9 Q You don't have a specific recollection?

10 A No.

11 Q But is that sense consistent with your
12 memory of what was going on approximately a week
13 after your office received the criminal referral?

14 A Probably, it would be either us or the U.S.
15 Attorney. It's probably us.

16 Q Telling the RTC just to cool it a little
17 bit?

18 A And again, it's probably Irons calling
19 back, but again, I don't recall.

20 MS. SIMONTON: Can I make phone calls
21 during your breaks? No, I'm sorry.

22 MR. GICALE: Off the record.

1 (Discussion off the record.)

2 BY MR. KRAVITZ:

3 Q Why don't we put that chronology to one
4 side for now. Now I'm going to show you a document
5 that you've looked at previously, which is the
6 October 7, 1992 teletype from FBI Little Rock to the
7 director of the FBI relating to Madison Guaranty
8 Savings and Loan, and it's -- the copy I'm going to
9 show you is pages 007181 through 007191.

10 And actually what I want to ask you, by
11 referring to this, I'd like to ask you some questions
12 about the meeting you testified about previously on
13 September 23, 1992 between members of your office and
14 members of the United States Attorney's office in
15 Little Rock. Do you understand?

16 A Yes.

17 Q If you could turn to page 10, which is
18 Bates stamp 0071990, and I just want to read this
19 part into the record. "On September 23, 1992, SAC
20 Little Rock and supervisory staff met with USA to
21 discuss this matter. There was the opinion of USA
22 EDAR the information concerning the check kite was of

1 possible interest with Anspaugh as a possible
2 target. It was also the opinion of USA the alleged
3 involvement of the Clintons in wrongdoing was
4 implausible and he was not inclined to authorize an
5 investigation or render a positive prosecution
6 opinion. It was also noted a complete and factual
7 determination of what transpired in any facet of the
8 referral would take some time. USA EDAR opined the
9 correct course of action was for him to have legal
10 research conducted on the statute of limitations on
11 the various applicable bank fraud statutes and to
12 complete an in-depth analysis of the voluminous
13 exhibits ancillary to the referral."

14 Let me just ask you some follow-up
15 questions based on that about the September 23, 1992
16 meeting. What was the conversation, the best you can
17 remember, leading up to Mr. Banks's statement on
18 September 23, 1992 that "the alleged involvement of
19 the Clintons in wrongdoing was implausible"?

20 A My recollection is that that was based on
21 his review of the facts contained in the referral.

22 Q Do you remember Mr. Banks actually using

1 the word "implausible"?

2 A I don't recall it specifically, no.

3 Q But you do remember Mr. Banks using words
4 to that effect?

5 A Highly unlikely or he don't see it or that
6 type of thing.

7 Q And was there any disagreement among the
8 people at that meeting on September 23, 1992 as to
9 the plausibility or implausibility of any alleged
10 wrongdoing on the part of the Clintons?

11 A No.

12 Q Everyone agreed that it was highly unlikely
13 or implausible that any allegations of wrongdoing by
14 the Clintons would pan out?

15 A Basically, right. I mean again, we hadn't
16 reviewed the 300 documents, so we don't have quite --
17 and I don't think they had really either, but we
18 tended -- that's the way -- I think we tended to
19 believe that is probably true, but we hadn't reviewed
20 the exhibits yet, so we're relying more on their
21 assessment than ours but in general that was the
22 consensus.

1 But I think you have -- we hadn't reviewed
2 the 300 exhibits so there was a little question there
3 but we were relying on -- they're the attorneys, and
4 their expertise, but in general, that was the
5 consensus, based on what Irons and our people and
6 their staff had reviewed.

7 Q Now, this portion that I just read says "it
8 was also noted that a complete and factual
9 determination of what transpired in any facet of the
10 referral would take some time."

11 How much time was anticipated that such a
12 complete and factual review would take?

13 A I don't recall now what we said.

14 Q Was it a matter of weeks or a matter of
15 months?

16 A I just don't recall.

17 Q Now, what statute of limitations issues did
18 Mr. Banks indicate that he wanted to have researched?

19 A Again, I know there were specifics, but I
20 don't recall a specific statute. And he explained
21 it, and it was certainly logical and reasonable.

22 Q Now, back on the first page of this

1 October 7, 1992 teletype from FBI Little Rock to the
2 director of the FBI, it indicates or it references
3 telephone calls from Kevin Kendrick to Steven Irons
4 on October 6 and 7, 1992.

5 Do you know what those telephone calls were
6 about?

7 A I don't recall specifically now. I'm sure
8 it related to the overall details of this case, but I
9 don't know the specifics. We did send a -- oh, the
10 10-7 -- based on our procedure, I think it would
11 relate to what he wants in the teletype, Kendrick to
12 Irons, but I'm not sure of that. I mean --

13 Q What you're saying is that --

14 A This teletype is coming in and they know
15 it, and I would -- my assessment, knowing how we
16 operate, is that he's calling Irons to tell him, make
17 sure you get these points in the teletype.

18 Q Kendrick is calling Irons?

19 A Right, right, calls to SA Irons.

20 Q So what you're assuming is that on October
21 6 and 7 Kendrick is calling Irons and telling Irons
22 to make sure certain points are addressed in the

1 teletype that's about to go from your office to FBI
2 headquarters?

3 A Or to get a further update so when it comes
4 in, he's got a handle on what's in the teletype.

5 Q Now, are you aware of anything that was
6 going on in your office or in the U.S. Attorney's
7 office in Little Rock relating to the criminal
8 referral between the meeting on September 23, 1992 at
9 the U.S. Attorney's office and these telephone
10 conversations on October 6 and 7 between Irons and
11 Kendrick?

12 A I'm not -- not specifics, but again, it was
13 a matter of paramount importance and we were sure it
14 was the highest priority, and we were closely
15 following it. Everybody was. I don't know the exact
16 specifics.

17 Q But based on the September 23, 1992 meeting
18 with Banks, Banks had not authorized any overt
19 investigation?

20 A Exactly.

21 Q So is it accurate to say that you all were
22 just kind of following it passively, waiting for --

1 to be told whether to go forward more aggressively?

2 A Right.

3 Q Now, back --

4 A Seeing what headquarters' reaction would be
5 to it.

6 Q Once headquarters found out about it?

7 A Once they got it on the 7th, right.

8 Q What's your understanding as to why
9 headquarters was not notified about this referral
10 until more than a month after it was received in your
11 office?

12 A I don't quite agree with that. We told
13 them on the 26th and basically set forth the details.

14 Q I apologize?

15 A The Airtel set forth basically what was
16 coming in.

17 Q Okay. August 26?

18 A August 26, right.

19 Q I understand.

20 A And we didn't actually get it until 9-2.

21 They were put on notice it was coming in.

22 Q When was the referral actually -- a copy of

1 the referral actually sent to FBI headquarters?

2 A I'd have to refresh my memory on that. I
3 believe it was October 6.

4 Q And what's your understanding as to why the
5 referral was sent on October 6 and not sooner or not
6 later? I mean why that day?

7 A I imagine they requested it.

8 Q As a follow-up to the August 26 Airtel?

9 A Right, right. And there was a call, see.
10 There was -- again I'm losing my dates, but I'm sure
11 there was some calls between 9-2 and 10-6 between
12 headquarters and the Little Rock office, so -- and on
13 the sixth call obviously they requested we send the
14 facts.

15 Q Now, on the chronology you've been working
16 off, specifically pages 1527 and 1528, there's an
17 entry at the bottom of 1527 dated 10-6-92 which says
18 "First Assistant USA advises they are going to
19 notify DOJ they received referral. Also advised Jean
20 Lewis of RTC now calling him. She called and said
21 she didn't mean to pester him but it was standard to
22 make a follow-up contact six weeks after any referral

1 to make sure it was received and find out if any
2 clarification or assistance was needed."

3 Were you aware at the time that the First
4 Assistant U.S. Attorney had informed Mr. Irons or
5 anyone else in your office as of October 6 that
6 Ms. Lewis was at that time calling the U.S.
7 Attorney's office in addition to calling the FBI?

8 A Well, I think there was something we talked
9 about earlier where we had -- you know, he is the
10 final determinant and so I think in a sense, we had
11 told him to call the U.S. Attorney's office because
12 we weren't going to do anything without their
13 concurrence.

14 Q Did Mr. Irons relate to you that the First
15 Assistant U.S. Attorney in Little Rock was
16 complaining that Ms. Lewis was pestering him?

17 A Again, I'm sure he told me that she was
18 calling him.

19 Q You're sure Mr. Irons told you that he had
20 heard from the U.S. Attorney's office that Ms. Lewis
21 was calling the U.S. Attorney's office?

22 A Right, right, right. I don't know whether

1 he said pestering or what, but I'm sure I got
2 information that they were calling the U.S.
3 Attorney's office, and that's in essence what we told
4 them to do.

5 Q Whether Mr. Irons used the word "pester" or
6 not --

7 A I don't recall.

8 Q -- was the implication something similar to
9 what pester means?

10 A I just don't recall.

11 Q I think we've used up this -- I know this
12 is going to make you sad, but I think we've used up
13 this chronology. I'll take this one back.

14 MS. SIMONTON: Off the record.

15 (Discussion off the record.)

16 BY MR. KRAVITZ:

17 Q I'm going to direct your attention again to
18 the October 7, '92 teletype from FBI Little Rock to
19 the director of the FBI, and specifically to page 4.

20 Now, the middle paragraph here, that
21 describes the previous investigation and trial that
22 you've testified about previously; is that correct?

1 A That's correct.

2 Q Now, you write -- this teletype states in
3 this paragraph on page 4, "The presiding judge made a
4 directed verdict of acquittal on David Henley and the
5 jury returned a verdict of not guilty on all counts
6 on McDougal and Jim Henley."

7 What's the purpose of including that
8 information in this teletype message to the director
9 of the FBI on October 7?

10 A Not guilty on McDougal and the reference to
11 Henley is again to reiterate to headquarters that
12 we've had a full investigation, went through a rather
13 lengthy trial and the gentleman was acquitted who was
14 the main target, and we should have had the best
15 evidence on him.

16 Q And it's fair to say, then, that that's an
17 indication of the view of -- your view and the view
18 of others in your office as to the prosecutorial
19 merit or potential prosecutorial merit of this
20 referral?

21 A Right. And again, taken in light of this
22 referral and the timing and circumstances, if -- our

1 fairness and objectivity, that we have to certainly
2 take this into consideration, considering when this
3 referral came in.

4 Q Now, on page -- actually, later on page 4,
5 you say "It is noted McDougal is described as a
6 diagnosed manic depressive and his psychological
7 state was part of his defense."

8 Now, that refers back to the trial that he
9 was acquitted at; correct?

10 A Correct.

11 Q And why are you telling the FBI director
12 about Mr. McDougal's mental state?

13 A Well, we're telling FBI headquarters. Well
14 again, I think this is somewhat relevant. He was the
15 main target. Obviously if we reopen it, he's going
16 to be of interest in the investigation maybe, and
17 maybe possibly a target or subject if we find other
18 statutes. So this is relevant for us to tell
19 headquarters.

20 Q And it's relevant because at least in your
21 view at the time, Mr. McDougal's mental state could
22 have affected your -- the prosecution's ability to

1 prove all the elements of the offenses?

2 A That's correct.

3 Q Now, on page 5, the teletype states "In
4 addition, another potential witness identified by
5 RTC, Bonnie Crocheron" -- C-r-o-c-h-e-r-o-n --
6 "testified in another Little Rock matter,
7 147-ALR-33244, as a records custodian for a financial
8 institution. Although she had no reason to lie, she
9 did so to a federal grand jury concerning her
10 unexplained alteration of records requested by the
11 grand jury."

12 Why was that information included in this
13 teletype?

14 A Well, the way I read it, she was a
15 potential witness identified by the RTC.

16 Q In the Madison referral?

17 A Exactly, and we put that in because it's
18 relevant that we have problems with her credibility
19 and truthfulness.

20 Q And this was information that your office
21 learned from where, the information about Bonnie
22 Crocheron? Is that something that came from

1 Mr. Banks or his office?

2 A 147, I imagine we were aware of that -- can
3 we go off the record?

4 MR. KRAVITZ: Sure.

5 (Discussion off the record.)

6 THE WITNESS: I believe that would have
7 been handled by Irons's squad so I believe we would
8 have been aware of that, by the white-collar crime
9 squad, so we would have been aware of that, or we may
10 have got it from the U.S. Attorney's office.

11 BY MR. KRAVITZ:

12 Q Now, on page 7 of this teletype, the
13 October 7, 1992 teletype, it states "It is the
14 opinion of Little Rock FBI and the United States
15 Attorney and First Assistant EDAR that there is
16 indeed insufficient evidence to suggest the Clintons
17 had knowledge of the check-kiting activity conducted
18 by McDougal or Anspaugh."

19 That statement is based on what, on the
20 September 23, 1992 meeting at the U.S. Attorney's
21 office, as well as the review of the criminal
22 referral?

1 A It would be all of the discussions and
2 review that we would have conducted up to the date we
3 sent this teletype in.

4 Q And when you say it is the opinion of
5 Little Rock FBI, who does that refer to?

6 A That would be our management staff.

7 Q Would it be Irons, you and Whitehead?

8 A Right.

9 Q Anyone else?

10 A Well, it would -- the case agent, it would
11 probably include Gretchen.

12 Q Was there any dissent among the management
13 staff at the Little Rock FBI?

14 A Not that I recall.

15 Q What about among the top officials in the
16 U.S. Attorney's office as of October 7, 1992?

17 A I wasn't aware of any.

18 Q You were aware of no dissent as of
19 October 7, 1992 in the U.S. Attorney's office --

20 A Right.

21 Q -- regarding the position that there was
22 insufficient evidence to suggest that the Clintons

1 had knowledge of the check-kiting activity conducted
2 by McDougal or Anspaugh?

3 A I don't recall any, no.

4 Q Now, the next sentence again on page 7 of
5 the teletype of October 7, 1992 reads "The earlier
6 mention of a campaign contribution to the
7 gubernatorial campaign also drew no nexus suggesting
8 knowledge or involvement by the Clintons."

9 What was that statement based on, again,
10 the communications between the two offices and your
11 reviews of the referral?

12 A Right. And I think one of the allegations
13 was something about a possible \$3000 illegal campaign
14 contribution is what I recall, and again based on the
15 assessment by primarily the U.S. Attorney and/or our
16 office, that's what our assessment was.

17 Q It was agreed that there was no evidence
18 that the Clintons knew about any alleged wrongdoing
19 regarding that campaign contribution; is that right?

20 A Well, I would say we said no nexus. No
21 evidence that -- not likely, right, basically.

22 Q But the point was whether it was nexus or

1 evidence, it was that there was no reason to believe
2 based on the referral or the evidence cited in the
3 referral that Mr. Clinton knew about any alleged
4 wrongdoing regarding the campaign contribution?

5 A That's my recollection.

6 Q And then the next sentence reads, "again on
7 page 9, paragraph 4 of the referral, RTC advises
8 there is not sufficient evidence at the present time
9 to prove knowledge by persons listed as witnesses in
10 the referral. Little Rock notes knowledge by or
11 assistance from the listed witnesses is not only not
12 indicated, it was not necessary for" --

13 MR. GICALE: Excuse me, you're reading from
14 page 8 instead of page 9; correct? You just said
15 page 9. Because everybody is looking at the wrong
16 page.

17 BY MR. KRAVITZ:

18 Q The teletype actually refers to page 9 of
19 the referral, but I'm reading starting on the bottom
20 of page 7 of the teletype.

21 A Okay, I got this.

22 Q So this is the bottom of page 7 of the

1 teletype. It reads, "again on page 9, paragraph 4 of
2 the referral, RTC advises there is not sufficient
3 evidence at the present time to prove knowledge by
4 persons listed as witnesses in the referral. Little
5 Rock notes knowledge by or assistance from the listed
6 witnesses is not only not indicated, it was not
7 necessary for McDougal/Ansbaugh to advise or include
8 the witnesses in the scheme."

9 Now, what are those sentences intended to
10 communicate to FBI headquarters?

11 A Okay. "Paragraph 4 of the referral, RTC
12 advises there is not sufficient evidence to prove
13 knowledge by persons listed as witnesses." That
14 would have been I believe -- not the main targets,
15 that would have been the Clintons and I believe
16 Tucker and I forget, but that was the witnesses who
17 in my recollection --

18 (Witness reviewed the document.)

19 I'm not sure of that last sentence.

20 Q Now, the bottom line is then as of the time
21 of this October 7, 1992 teletype from your office to
22 FBI headquarters, is it accurate to say that your

1 office was essentially in a noninvestigative posture
2 pending further instructions either from the U.S.
3 Attorney's office or from FBI headquarters?

4 A That's correct.

5 Q And the reason that you were in this
6 noninvestigative posture on October 7, 1992 was that
7 it was the collective judgment of the top officials
8 in your office and of the top officials in the U.S.
9 Attorney's office in Little Rock that the referral
10 either had little prosecutorial merit or was not the
11 best use of limited resources or both?

12 A As well as the facts were the type that
13 warranted further review and we could certainly
14 address them, conduct the investigation later on if
15 the additional review and so forth indicated it was
16 warranted.

17 Q Okay. And that was a -- as far as you were
18 aware, that was a unanimous view among top officials
19 in your office and top officials in the U.S.
20 Attorney's office as of October 7, 1992?

21 A That's the way I recall it.

22 Q On October 9, 1992, as you've already

1 testified, your office received a teletype from FBI
2 headquarters instructing your office to conduct a
3 limited investigation and to review the 300 or
4 approximately 300 exhibits to the referral; correct?

5 A Correct.

6 Q What is your understanding as to what
7 happened between October 7 and October 9 that caused
8 this change in investigative approach?

9 A Well, again, I think they were being also
10 very -- they were being cautious and --

11 Q Who is "they"?

12 A FBI headquarters. And I don't know what
13 discussions they had at the department, but I'm just
14 speaking of FBI headquarters, that they were being
15 very cautious to make sure that there was nothing in
16 those 300 pages that hadn't been reviewed in fairly
17 good detail, that we hadn't overlooked anything, and
18 by both us and the U.S. Attorney's office.

19 Q Now, you testified earlier in your
20 deposition when shown a document by Mr. Gicale that
21 you were aware of a meeting that certain high level
22 FBI officials attended with certain Justice

1 Department officials, and I think you said that you
2 thought that meeting was on October 8, 1992?

3 A Was it the 8th or 9th?

4 Q I think when shown a document --

5 A There was a meeting or discussion. Was it
6 the 8th? Okay, you're right, yes.

7 Q What are you looking at?

8 A 961.

9 Q FBI document 961?

10 A Yes.

11 Q Now, is this the meeting that involved the
12 head of the criminal division at the Justice
13 Department, Mr. Mueller?

14 A I'm not sure who was at that meeting.

15 Q What do you know about that meeting?

16 A I believe I got a call from somebody after
17 that basically telling me what they decided and that
18 they would be sending me a teletype basically telling
19 us what to do.

20 Q Who did you get that call from?

21 A I believe that was Potts, but I'm not
22 positive.

1 Q This is Larry Potts?

2 A Right.

3 Q And what did Mr. Potts tell you when he
4 called you?

5 A Basically that, you know, they had decided,
6 and I don't know whether he said in a conference --
7 he must have said it, I'm sure he did, I don't recall
8 the specifics -- that they had been talking to the
9 department and as a result of that, that they were
10 instructing us to do the review and have it back in
11 by the 16th.

12 Q Did Mr. Potts indicate to you who he spoke
13 with at the Department of Justice?

14 A Probably, but I'm not -- I just don't
15 recall specifically. I imagine he did, but I'm not
16 sure.

17 Q Do you have any recollection as to whether
18 Mr. Potts reported speaking with high level as
19 opposed to lower level officials at Justice?

20 A Well, I figured at his level it would be
21 fairly high level.

22 Q By fairly high, you mean someone at like

1 the Assistant Attorney General level or higher?

2 A In charge of a department and so forth,
3 yes.

4 Q Did you speak with Mr. Potts on October 8,
5 1992?

6 A I don't recall the date, but I do know that
7 Potts called after I had talked to Verinder early on
8 in this thing, so there was a conversation with
9 Potts, and I believe this is when it was.

10 Q Okay. I mean, because I think you
11 testified a minute ago that Potts called and told you
12 that you were going to be getting a teletype telling
13 you to do the limited investigation.

14 A Right, I believe this is it.

15 Q So that it would have been on October 8 or
16 possibly the 9th; is that right?

17 A Right. I'm fairly certain that's when it
18 was.

19 Q Did Mr. Potts indicate why it was that the
20 Justice officials wanted your office to do this
21 limited investigation?

22 A No. They had made their decision and

1 basically the purpose of the call, as I recall, was
2 that we want this done and we want a response by the
3 16th.

4 Q Had you ever experienced a situation before
5 in which FBI headquarters directed your office, the
6 field office that you were a part of, to conduct an
7 investigation in a matter in which your field office
8 had already, at least as a preliminary matter,
9 concluded that no investigation was warranted?

10 A Absolutely.

11 Q This wasn't unusual?

12 A Not unusual, no.

13 (Laughter.)

14 Q Just asking. Did you have any discussion
15 with Mr. Potts on October 8 or 9, 1992, whenever it
16 was that he called you, about any concerns that had
17 been articulated either within FBI headquarters or
18 the Justice Department about the pace or the manner
19 in which your office, the Little Rock field office,
20 was handling the criminal referral?

21 A Well -- and again, I don't recall exactly
22 what I said but I'm sure that I -- you know, we got

1 to consider the timing of this. I'm sure I mentioned
2 the previous trial. All of those factors I'm sure I
3 mentioned. As I recall, the decision had been made,
4 they told us to do the limited and we did.

5 Q To your knowledge, did anyone from your
6 office, the Little Rock field office at around this
7 time, early October 1992, complain to anyone or voice
8 any concerns to anyone at FBI headquarters or the
9 Justice Department, any concerns about the way that
10 the U.S. Attorney's office in Little Rock was
11 handling the criminal referral?

12 A That's tough for me to answer. There's --
13 I'm sure there were agents in the office who didn't
14 like Banks and people in the U.S. Attorney's office.
15 It's a possibility, but I don't recall.

16 Q Okay. I guess my question was to your
17 knowledge --

18 A No, I don't recall.

19 Q So you don't know of any -- you don't know
20 of anyone in your office complaining to anyone at
21 main Justice or FBI headquarters about the way
22 Mr. Banks's office was handling the criminal referral

1 as of October '92?

2 A I don't recall that.

3 Q Did Potts tell you on October 8 or 9 when
4 you spoke with him who had called the meeting that he
5 attended on October 8?

6 A He probably did, but I just don't recall
7 the specifics.

8 Q Did he indicate to you whether it was
9 someone from Justice or someone from the FBI who
10 called the meeting?

11 A I just -- I'm not sure.

12 Q Who made the decision to direct your office
13 to do this limited investigation? Was it FBI
14 headquarters or was it DOJ?

15 A You mean -- he sends -- they send the
16 teletype saying do it; right.

17 Q Yeah, but who made the decision that that's
18 the teletype you were going to get?

19 A You mean at headquarters?

20 Q Do you know whether it was someone in the
21 FBI as opposed to in the Department of Justice?

22 A Oh, oh, I'm sorry, I would assume it's a

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1 joint -- the FBI makes a decision and sends me the
2 teletype, and I would assume it's after consultations
3 with the department, but they're the ones that tell
4 us.

5 Q The department is --

6 A The FBI --

7 Q FBI headquarters --

8 A Right.

9 Q -- gives you the direct order?

10 A Right.

11 Q But your testimony is you don't know
12 exactly who -- whether it was FBI headquarters or
13 Justice Department that actually was the moving force
14 behind the decision?

15 A Right, right, right.

16 Q Have you ever talked with Mr. Potts since
17 October of 1992 and learned from him what was behind
18 the decision to direct the limited investigation?

19 A Not that I recall. I've talked to him --
20 I've seen him since then obviously, but I don't
21 recall talking about that.

22 Q When you received the teletype on October

1 9, 1992 directing this limited investigation and
2 directing also that it be completed one week from
3 that day, was there a sense of urgency that you
4 felt? I mean, was that a rush?

5 A Well, it's a short deadline, but due to the
6 impact of the case and the possible sensitivity, why,
7 I could see why they ordered a week, but that's -- I
8 would say it's a short deadline, but you've got to
9 take into consideration the sensitivity and the
10 importance of the case.

11 Q Now, what was your initial reaction as to
12 the appropriateness of that order when you first
13 learned of it on either October 8 or 9, 1992?

14 A I don't know where I -- I don't recall
15 whether I was upset or what my opinion was. My main
16 concern was that we didn't do anything overt or
17 without the total concurrence of the U.S. Attorneys.
18 Within that guideline, why, you know, I conceded
19 doing the review. I don't recall exactly what my
20 response was. I may have said it's a little short or
21 something. I don't know. I don't know. My main
22 concern in the overall thing was we do nothing overt.

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1 MR. GICALE: Off the record.

2 (Discussion off the record.)

3 BY MR. KRAVITZ:

4 Q Back on the record.

5 A I know Potts called and discussed the
6 case. I believe it was this date. I don't want to
7 give an incorrect date. I know he called on it, so I
8 believe it was the date, but I want to be 100 percent
9 positive. I know he called, and I believe that was
10 it, so I'm not crystal-clear.

11 Q I'm going to hand you a several-page
12 document that actually includes a number of different
13 documents. They just all happen to be together. And
14 it's production JDA 190 through JDA 195. I
15 specifically want to direct your attention to a
16 teletype from FBI Little Rock to FBI headquarters
17 dated October 16, 1992, which is JDA 193 through
18 195. This is a teletype that was sent from your
19 office to the FBI headquarters on October 16, 1992?

20 A Right.

21 Q Do you recognize this?

22 A Yes.

1 Q Now --

2 A That's the one we sent after the review was
3 completed; right?

4 Q Right.

5 A Yes.

6 Q Now, the first paragraph, it has "subject"
7 and then it lists what the subject is and then it
8 says, the next paragraph, "re: teletype from director
9 to Little Rock, October 9, 1992, captioned as above
10 and Telcal," or T-e-l-c-a-l, "from SAC Little Rock to
11 FBI headquarters, October 9, 1992."

12 A Right.

13 Q Then it says "as discussed in referenced
14 telephone call, Little Rock will not initiate an
15 investigation of captioned matter."

16 Now, does that indicate that on October 9,
17 1992, a week before this teletype is sent, that
18 you -- you're the SAC.

19 A Right.

20 Q That you told FBI headquarters that despite
21 their directive to conduct a limited investigation,
22 that your office would not initiate an investigation

1 of the captioned matter, or have I misinterpreted
2 that?

3 A Again, the day they sent the teletype out
4 was what, the 9th? Okay. I had obviously talked to
5 somebody on the 9th. And then we do the review.
6 What this teletype is saying is that we have done the
7 review now and as a result of the review, basically
8 we have the same opinion. I haven't read all the
9 teletype. I'm sure that's what we stated. Right.
10 And I mentioned the USA's concurrence, and again go
11 through the review.

12 Q But do you remember telling FBI
13 headquarters on the 9th that your office would not
14 conduct an investigation?

15 A I don't remember specifically but that's
16 what that says. I'm sure -- maybe the wording is
17 wrong. I'm sure what I said was we'll do the review,
18 and we did the review, and after the review and based
19 on the opinion of the U.S. Attorney and so forth, we
20 indicated, as earlier, that we weren't conducting --
21 initiating an investigation.

22 Q Now, you've already been asked about the

1 letter that you received from Mr. Banks on October
2 16, 1992.

3 A Right.

4 Q Now, I take it you had communications with
5 Mr. Banks during that week of the limited review,
6 October 9 through 16?

7 A I'm fairly certain I did.

8 Q What was your understanding as to what
9 Mr. Banks's view throughout that week was?

10 A Well, I guess one thing is important. I
11 had just assumed during this period that they had
12 been in contact with the department. Somewhere I
13 learned that they hadn't, so -- and I think he puts
14 in there that, you know, now the department is going
15 to know about it.

16 So I just assumed that they had been
17 talking to the department on a matter this
18 important. I think somehow it came up that they
19 hadn't, so that is one purpose of the letter. And I
20 believe he -- well, the rest of it is setting out his
21 feelings in no uncertain terms.

22 Q And were these feelings that Mr. Banks

1 expressed to you either personally or over the phone
2 in addition to the letter that you received on the
3 16th of October?

4 A I believe he called me and said he was
5 sending it. I don't know exactly how it developed,
6 but I did get a copy, but I believe he told me about
7 it.

8 Q Now, on the 16th of October in the teletype
9 that I just showed you, you informed FBI headquarters
10 that based on your review and the review of the U.S.
11 Attorney's office of the 300 exhibits to the
12 referral, your office would remain in a
13 noninvestigative posture; is that correct?

14 A Right.

15 Q And the reason for that decision was what?

16 A The strong recommendation by the U.S.
17 Attorney's office which we basically concurred in and
18 further review of the 300 exhibits, that right now
19 based on -- until they have some concerns and statute
20 of limitations and so forth and other factors, as
21 well as there didn't seem to be any -- and the
22 witnesses, that it wasn't warranted until further

1 review and researching the statutes and that type of
2 thing, which would have to come from the U.S.
3 Attorney's office.

4 Q And was it also a statement of your view as
5 the senior official in the Little Rock FBI field
6 office that your resources, your limited
7 investigative resources, were better served being put
8 on other, more important cases?

9 A Well, if there was something there, we
10 would certainly put the resources in it, because if,
11 as what some people thought was there, it would have
12 certainly been the type of case that warranted it.
13 Based on the review and everything, we didn't see it
14 as being that priority at that time.

15 Q You were shown by Mr. Gicale a copy of your
16 letter dated December 15, 1992 to Jean Lewis
17 acknowledging receipt of the criminal referral that
18 actually had been received on September 2, 1992. How
19 long after the receipt of a criminal referral did the
20 Little Rock FBI field office ordinarily acknowledge
21 receipt of a referral back in that time period?

22 MS. SIMONTON: For the record you're

1 referring to FBI 1077; is that correct?

2 MR. KRAVITZ: Thank you. I never would
3 have found it.

4 THE WITNESS: Generally we confirm a
5 receipt of something like this, but it was oral
6 and -- I think there's a second purpose of this
7 letter also, acknowledging receipt but also telling
8 them in the future to contact the U.S. Attorney's
9 office.

10 BY MR. KRAVITZ:

11 Q So is it your testimony, then, that in the
12 ordinary case, the acknowledgment of the receipt of a
13 criminal referral was done orally as opposed to in
14 writing?

15 A No, no. I believe that we would
16 generally -- and anything that comes in like that
17 from another agency, we would send them either a
18 letter or -- but it is not unusual to make a notation
19 on the file that on this so-and-so day, I contacted
20 the AUSA or somebody in the RTC to say we got the
21 referral. But I think this has another purpose, and
22 that's to tell them in the future, make all your

1 contacts to the U.S. Attorney's office.

2 Q But there had been -- between September 2
3 and December 15, there had been sufficient contact
4 between Ms. Lewis and your office for her to know --

5 A That's why I say, I don't think they had
6 any question that we had it. I don't think -- that's
7 why I think the major purpose of this letter is to
8 tell them in the future, talk to Dodson.

9 MR. KRAVITZ: It's now 4:42 and a half, and
10 I'm going to stop now because I know Mr. Pettus needs
11 to get to the airport and I know Lou has a couple of
12 follow-up questions.

13 EXAMINATION

14 BY MR. GICALE:

15 Q With respect to the October 16, 1992 letter
16 but -- and previous to that, the teletype from
17 headquarters, which is marked as FBI 523 setting the
18 October 16, 1992 date, now, was October 16, 1992 date
19 set by headquarters or was it set by your office?

20 A My recollection is they set it, but I'm not
21 positive.

22 Q Did they consult with you in terms of

1 setting this?

2 A I don't recall. I don't know. Typically
3 what happens there is the supervisor will call the
4 supervisor and they will discuss it. I just don't
5 recall.

6 Q Now, at some point in time when I asked you
7 questions earlier today, you had said that after the
8 meeting in Banks's office that you set a date based
9 on the time you thought it would take to review the
10 documents.

11 A Oh, I better -- I'm just not sure, then, of
12 that. You mean after the meeting in Banks's office
13 we --

14 Q Right, right.

15 A I'm not certain of that. I'm not certain
16 of that. I would just have to refresh my memory
17 somehow.

18 Q So you don't know how the date was set
19 except that -- well, now having looked at these
20 documents, do you recall whether it was headquarters
21 or whether it was your office that set the date?

22 A I thought it was headquarters but I -- you

1 know, I'm not sure.

2 Q Now, when you said it was a short deadline,
3 why did you characterize it as a short deadline?

4 A Well, with 300 exhibits and three or four
5 people doing the review, that's a fairly short
6 deadline.

7 Q Right. Would more time have been helpful
8 to you?

9 A Well, again, I think you've got to consider
10 the impact of this case and the significance of the
11 case and the fairness issue, again. To make sure
12 that everything was reviewed and that they hadn't
13 missed anything, that's why the shorter deadline.

14 So in those kind of situations, if we have
15 to, we can put more people on it.

16 Q But to do a thorough review sometimes takes
17 a fair amount of time; correct?

18 A Right.

19 Q So was it in the interest of someone to do
20 a thorough review, to do it in a very short period of
21 time?

22 A I had total confidence in our people who

1 were doing it. I guess you could say if they had two
2 weeks or three weeks it might have been more
3 thorough, but I had confidence in basically our
4 financial analysis by Gretchen and Irons who did it.
5 But it could have been longer and it could have been
6 more thorough.

7 Q Again referring to Banks's letter, was he
8 concerned about the deadline? And I ask that
9 question because in the fourth paragraph of his
10 letter of October 16, 1992 -- and just real quickly,
11 this is again FBI 1000 -- he states "as a part of
12 your review, you are required to send a prospective
13 proposal for such investigation by Friday, October
14 16, 1992. Such an order does not apply to this
15 office."

16 A I am now advised if you have been --
17 (Witness reviewed the document.)
18 Okay. Now what's your question?

19 Q Well, I mean looking at that now, was he
20 concerned, do you recall whether or not he was
21 concerned about that deadline? Because in this
22 letter he seems to imply that --

1 A It would apply by that letter he was.

2 Q Do you recall whether he was?

3 A I don't recall, no.

4 Q In fact, in this letter, and I'm going to
5 refer to the second page of that letter, the second
6 to last paragraph, he talked about in due time, he
7 would revisit this with you?

8 A Right.

9 Q So he indicated that with some additional
10 time, he would later discuss this with you; correct?

11 A He would --

12 Q Review the various issues that he had
13 discussed, statute of limitations.

14 A When the urgency of this particular time
15 had passed he says that somewhere in there, doesn't
16 he? Maybe not in this memo but in another one, he
17 mentioned the factors about, again, fairness and so
18 forth and the election and the impact on the
19 witnesses to be totally fair. Maybe he doesn't in
20 here but --

21 Q Right. He was concerned about that, but he
22 was concerned about the deadline; correct? And again

1 I'm referring to that first page, second --

2 A It would seem that he was concerned about
3 the deadline, right.

4 Q Very briefly, with respect to Ms. Lewis and
5 her professionalism and objectivity, did you have any
6 firsthand knowledge or have any firsthand experience
7 that would allow you to form an opinion as to her
8 professionalism or objectivity?

9 A No, and I believe I said, I may have
10 casually met her in the office one time, but other
11 than that, I don't think I ever met her -- or very
12 casual back in the squad area. And other than that,
13 I had no personal contact, so that's mainly coming
14 from discussions with our people.

15 Q Concerns that they may have raised?

16 A Right.

17 MR. GICALE: Okay. I don't have anything
18 further.

19 MR. KRAVITZ: Thank you.

20
21
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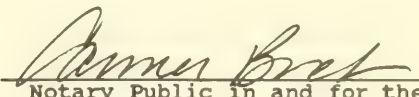
1 (Whereupon, at 4:49 p.m., the deposition
2 was concluded.)
3

4 -----
5 DON K. PETTUS
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

**DEPOSITION OF JOHN D. ARTERBERRY
IN RE: S. RES. 120**

WEDNESDAY, OCTOBER 18, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JOHN D. ARTERBERRY, called for examination pursuant to notice of deposition, at 4:10 p.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, Esq.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CHARLES J. SGRO, Esq.
Special Assistant to the Deputy Attorney General
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530
On behalf of the Deponent.

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EXHIBITS

John D. Arterberry DEPOSITION NUMBER	IDENTIFIED
Arterberry Exhibit 1	21, 1852
Arterberry Exhibit 2	22, 1947

PROCEEDINGS

Whereupon,

JOHN D. ARTERBERRY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A John D. Arterberry.

Q And your present business address?

A 1400 New York Avenue, Northwest, Washington, D.C.

Q And your telephone number there?

A 202-514-0890.

Q And your present position?

A I'm deputy chief for financial institution and securities fraud in the fraud section, which is a section of the criminal division at the Department of Justice here in Washington.

4

Q And how long have you been employed in that position?

A I've been in that position since 1991, around, I think, June, sometime midyear of 1991.

Q Mr. Arterberry, this deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

Section 1(b)2(c) of Senate Resolution 120 authorizes investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation. This will be the focus of today's deposition.

I believe you were requested to testify on October 5, 1995. This deposition is being taken in

1 advance of a public hearing which may occur in
2 October or November. It's possible that you may
3 testify at that hearing.

4 We will ask you a series of questions.
5 You're testifying under oath. If you don't
6 understand a question, let us know. We will rephrase
7 it.

8 The stenographer will prepare a record of
9 questions and answers. The deposition will be
10 treated as committee confidential until the
11 commencement of the hearings. Prior to the hearings,
12 you will receive a letter from the committee telling
13 you that you may come to the Senate to review the
14 transcript of your deposition and make note of any
15 corrections for transcription on an errata sheet.

16 If you are called to testify at a public
17 hearing, you will be permitted to have a copy of your
18 deposition transcript four days in advance of your
19 testimony. You may be represented by counsel.

20 Objections to the form of questions will be
21 noted for the record. Counsel may object on grounds
22 of privilege or relevance. And the committee

1 chairman may rule on objections where the witness
2 refuses to answer a question.

3 Are you aware of the committee's document
4 request to the Department of Justice dated
5 October 25, 1995?

6 MR. KRAVITZ: October 25?

7 MR. GICALE: I'm sorry, August 25, 1995.

8 THE WITNESS: Yes.

9 BY MR. GICALE:

10 Q Did you search for responsive documents,
11 notes, reports or memoranda pursuant to the
12 committee's request?

13 A We had -- I think, prior to the time that
14 that request was made, we had collected all relevant
15 records, and I think those were in a central
16 location. I think those were all available for
17 whatever response was made to that.

18 Q So to the best of your knowledge, have all
19 responsive documents been produced?

20 A To the best of my knowledge, they have.

21 Q Did you speak to anyone other than counsel
22 from the Department of Justice here today with

1 respect to the substance of your testimony?

2 A I've spoken -- you mean in addition to
3 Mr. Sgro?

4 Q Yes.

5 A I've spoken to a number of people about
6 these proceedings.

7 Q Did you speak to them about the substance
8 of your testimony here today?

9 A I've spoken to them about this subject
10 matter that is being discussed in these, yes. I just
11 saw Mr. Mackay on his way out and we had a chat.

12 Q Did you talk to him about his testimony
13 here today?

14 A In general terms. More about the length of
15 time that he spent here more than anything else.

16 Q Did you speak at all about what he
17 testified to or the questions he was asked?

18 A I don't think so. It was in kind of a
19 three-way conversation that Mr. Sgro, Mr. Mackay and
20 I were having, generally about the length of time
21 that he was here and more in a joking way about what
22 he had been doing.

1 Q Did you have any conversations with anyone
2 else about the substance of your testimony here or
3 the questions asked?

4 A I also had a conversation today with Allen
5 Carver, who I think, testified yesterday, not about
6 the substance of my testimony because I didn't know
7 what I would be testifying about. But he talked
8 about his appearance yesterday.

9 Q Did he talk about his testimony?

10 A He talked about -- yes, a number of areas
11 that he had testified about, yes.

12 Q What areas did he tell you he testified to?

13 A I think areas dealing with referrals that
14 were made -- that were made by the RTC that were
15 received at the department.

16 Q What did he tell you about those? Did he
17 tell you what he testified to about them?

18 A I think more that those were just as we
19 expected. Those were areas of interest of the
20 committee. I'm not sure that he got into the
21 particulars of what he testified about.

22 Q But that he was questioned about the

1 referrals?

2 A Oh, yes, yes.

3 Q What other areas -- what other things did
4 he tell you, either his testimony or the questions
5 that were asked?

6 A He also, I think -- he referred to a
7 chronology, I think, that he had prepared that I
8 think he had provided to you.

9 Q When you say "referred to it," what do you
10 mean?

11 A He said he prepared a chronology for his
12 own use, and I think it had been provided to the
13 attorneys who were asking the questions, both the
14 minority and the majority attorneys.

15 Q With respect to that chronology, did he say
16 anything else in terms of questioning about the
17 chronology or the substance?

18 A Well, he told me generally what the
19 chronology dealt with. I think that he had used --
20 my recollection is that he had used our case tracking
21 system, correspondence tracking system to try and
22 establish some time lines about when things occurred,

10

1 when documents came in.

2 Q Did he give you a copy of that chronology
3 to review before you came in?

4 A No, I haven't seen it.

5 Q Did you discuss the specific dates in the
6 chronology with him or the events?

7 A We discussed some specific dates.

8 Q Which ones?

9 A One area, I think, had to do with
10 February -- I'm pretty sure it's February '93 time
11 when he had attended a bank fraud conference that the
12 department had sponsored out on the West Coast, and I
13 think I attended that also. When he mentioned it, I
14 remembered that I had been at the same conference. I
15 think he had brought that up in the context of his --
16 and I think this was part of the chronology
17 prepared -- of when a memo had been prepared within
18 the fraud section about one of the referrals that had
19 originally gone to the United States Attorney's
20 office in Little Rock.

21 Q So you just talked about the fact that you
22 were both in California -- or I'm sorry, you were

1 both away at this conference together?

2 A I think -- that's right. I think we were
3 both at the conference, and I believe that -- if I'm
4 not mistaken, the chronology showed that an
5 assignment had been made to one of our attorneys
6 while we were out there at the conference. An
7 assignment had been made to prepare Mark MacDougall,
8 one of the attorneys in the trial section.

9 Q Was he reminding you of this?

10 A No, it was an observation he had made in
11 going through the case tracking system to see when
12 things had come into the section.

13 Q Did he talk at all about any of the
14 chronology, any other dates or events?

15 A Yes, he did. I'm just trying to remember
16 now the --

17 Q Before you get into other events, did he
18 tell you why he was referencing or discussing these
19 events with you or this chronology?

20 A Why he was discussing it with me?

21 Q Right.

22 A No. I think simply it was a matter of we

1 had talked within the section about this, about the
2 inquiry and about the investigation that we had done
3 and about the referrals that we had seen and that had
4 been reviewed. It was in that same sort of context
5 that we're discussing it today.

6 Q Although in the past, you've discussed it
7 before you all testified?

8 A That's right.

9 Q And now you've done it after he's testified
10 but before you've testified?

11 A That's right.

12 Q What other dates in the chronology or
13 events did you discuss?

14 A Continuing on that period of time, I think
15 that he had also, in just looking at the week, when I
16 think this request had come in or when the attorney
17 had been assigned to prepare a memo, I think he had
18 returned that week from the conference. He talked
19 about going to a bank fraud working group meeting
20 which we have monthly, and then about -- I think
21 again, this is from the correspondence tracking --
22 determining that the memo left the section the

1 following week around Tuesday or Wednesday, I think,
2 of that week in signed or initialed form.

3 Q Did he talk about how much time he had to
4 review the memo?

5 A No. Simply that he had tracked how the
6 thing had come in and when it had gone out of the
7 section.

8 Q Did he talk about any other dates or events
9 in that chronology?

10 A Yes. Tracking on -- well, I think he also
11 had established through the case tracking system when
12 the document had come into the criminal division. I
13 think it had come in on a Friday. I think it came
14 into the fraud section on the following Monday, if I
15 understood the chronology, and sometime during that
16 period -- I guess it was the week of the bank fraud
17 conference, it was assigned to the trial attorney.

18 Q So Friday to the criminal division, Monday
19 to the fraud section?

20 A And I think that was the last week of
21 February, if I'm not mistaken, of '93.

22 Q And he was saying it was with the fraud

1 division all of that week until he got back? Is that
2 what he was saying?

3 A I think that's right, if I understood the
4 chronology, that the assignment or the document, the
5 referral or whatever that came with it, was in the
6 section that week, and I think the MacDougall memo
7 left the following week, I understood the chronology.

8 Q Did you discuss how long MacDougall had to
9 prepare the memo?

10 A No.

11 Q What other dates or events did you discuss
12 in this chronology?

13 A I think in that same line of discussion,
14 the fact that it had gone out of the division, I
15 think, around the middle of March. March the 19th
16 sticks in my mind, and I think after that, it was
17 difficult to assess exactly where it had been because
18 I'm not sure that our tracking kept up with it once
19 it left the criminal division, but it had left the
20 section in fairly short order.

21 Q Did you discuss any other events or dates
22 in the chronology?

1 A We did. I'm trying to take these in
2 order. This is almost chronological. The other part
3 of the chronology -- chronological in terms of the
4 way the time unfolded here, I think the next thing
5 was how the subject of the referral arose again in
6 the fraud section. I think that was either in some
7 contact, whether it was E-mail or telephone call,
8 from the Deputy Attorney General's office, and that
9 must have been, I think, in August or September of
10 the same year, '93.

11 Q Was there any other discussion about any
12 other event or date?

13 A There was. Again, I think it brings us on
14 forward through that period. There was a meeting
15 involving Paula Casey, who was U.S. Attorney at the
16 department dealing with the recusal. That, I think,
17 occurred sometime in November.

18 MR. GICALE: Can we go off the record for a
19 second?

20 (Discussion off the record.)

21 BY MR. GICALE:

22 Q So there was a reference to some November

1 date?

2 A My recollection is that -- and I'm not sure
3 whether that's my sense of it or whether that was in
4 Mr. Carver's chronology.

5 Q Did you discuss any other date or event?

6 A We did. We discussed the events
7 surrounding the SBA's documents, which we had
8 requested that they provide to the investigation.

9 Q And what did you discuss about that?

10 A The fact that we had asked them to retrieve
11 some documents that had been the subject, I think, of
12 a request from the White House.

13 Q Did you discuss anything further about that
14 request?

15 A The nature of how those were returned and
16 the fact that the request from the White House had
17 followed a Congressional -- and I believe it had to
18 do with the Small Business Administration oversight,
19 what have you, request for the documents. And
20 following that request, I think the SBA had gotten a
21 request from those documents.

22 Q Now, was this Mr. Carver telling you about

1 what his answer was, or was this Mr. Carver telling
2 you about what was in his chronology? Was this
3 Mr. Carver --

4 A It was a mix. Kind of hard to separate
5 that.

6 Q Was he asking you questions about what you
7 recall had happened?

8 A No, he did not.

9 Q Or was he just relating to you what the
10 questions and his answers were?

11 A I'd say rarely was he saying anything about
12 what the questions were. Simply, I think, areas that
13 he had testified about, and from time to time
14 references to the chronology and how helpful that had
15 been in reconstructing the time frame.

16 Q You discussed the SBA documents, the
17 request for retrieval from the White House. What
18 else with respect to the SBA?

19 A The retrieval, the SBA's retrieval of those
20 documents at our request.

21 Q Did you discuss the circumstances of the
22 retrieval, who retrieved them, for example?

1 A Yes, and how they were delivered because I
2 guess at the time that this occurred, it was
3 something I had been involved in. I think we found
4 some humor in it.

5 Q The fact that they were delivered on the
6 street?

7 A That's right, kind of curb service. We
8 joked at the time.

9 Q Anything else about the SBA investigation?

10 A Yes. I think that my notes of a
11 conversation -- I'm not sure whether it was a memo to
12 file or notes or something -- a conversation with one
13 of the SBA attorneys at the time about the documents.

14 Q Which SBA attorney?

15 A I believe it was Mark Stephens. I'm not
16 sure we mentioned him by name during the conversation
17 today.

18 Q Which portion of your notes were you
19 referring to?

20 A I think he just said -- and maybe he had
21 been shown a set of my notes -- either notes or a
22 memo to file. It wasn't clear to me having to do

1 with the conversation I had with Stephens.

2 Q Did you have any further discussion with
3 respect to the SBA investigation?

4 A When you say the SBA investigation --

5 Q Or his questioning with respect to the
6 SBA.

7 A I think that's probably the substance of
8 it.

9 Q Did you discuss anything else, any other
10 dates or events?

11 A We did. We discussed some of the events
12 surrounding our investigation of this matter, and I
13 think he had said that his chronology, I think, ran
14 from early time -- the earliest times when this first
15 came to the fraud section in whatever form and
16 continued up to the point of the special counsel's
17 assuming responsibility for investigating the matter.

18 Q What other events did you discuss?

19 A I'm having difficulty remembering what, if
20 anything, we talked about in terms of the -- well,
21 one thing that I think he talked about was during the
22 time we were investigating his efforts to obtain

20

1 documents that David Kendall held and the discussions
2 he had had with Kendall about subpoenaing those
3 documents.

4 Q And what was the nature of the discussion
5 with respect to that?

6 A Well, I think it had to do with the
7 language of the subpoena and whether -- if I
8 understood correctly, whether Kendall would have
9 directed the use of any kind of language or what have
10 you. I think Mr. Carver's reaction to that was he
11 was not directing -- we were simply getting the
12 documents. We wanted to get the documents under
13 subpoena.

14 Q Did you discuss any other events regarding
15 the investigation?

16 A I think that covers it, because I think it
17 was shortly after that that we got into the handoff
18 of the special counsel. I think that covers the
19 items we discussed, and I didn't make any notes, and
20 this was -- because it's fairly familiar material, I
21 don't necessarily have a strong impression of
22 everything we talked about, but I think I've given

1 you the essence of it.

2 Q Did you have discussions with anyone else
3 with respect to the substance before you testified
4 here today?

5 A No, I have not.

6 (Arterberry Exhibit 1 identified.)

7 BY MR. GICALE:

8 Q I'm going to show you what's marked as
9 Deposition Exhibit Number 1, Arterberry 1. This is a
10 copy of your House deposition, the House deposition.
11 It's the Committee on Banking and Financial Services,
12 U.S. House of Representatives, Washington, D.C.,
13 Wednesday, September 27, 1995 in the matter of
14 Madison Guaranty Savings & Loan.

15 You were sworn during this deposition; is
16 that correct?

17 A That's correct.

18 Q And have you had an opportunity to review
19 your deposition?

20 A I have. I received a copy of this, I
21 think, late last week.

22 Q After reviewing it, does it truly and

1 accurately reflect your testimony of that day?

2 A In substance. I've talked to Mr. Sgro
3 about an errata sheet that I had prepared as I
4 reviewed the transcript. At this point, it's simply
5 on a legal pad.

6 Q So you're in the process of preparing that?

7 A That's right.

8 Q And it is my understanding that through
9 Mr. Sgro, you will be submitting an errata sheet to
10 the committee that we can identify as Exhibit
11 Number 2 with respect to this transcript; correct?

12 MR. SGRO: Yes.

13 THE WITNESS: All right, sir.

14 (Arterberry Exhibit 2 identified.)

15 BY MR. GICALE:

16 Q You were questioned, Mr. Arterberry, in a
17 number of different areas by the House Banking
18 committee in this deposition of September 27th. And
19 I will try to avoid going over areas that have
20 already been -- going over questions where you have
21 answered them under oath, questions that we may have
22 asked and try to restrict myself to questions and

1 areas that I think might need to be explained or
2 expanded.

3 First, with respect to a document, and the
4 only number I have on it is JDA 000169.

5 MR. KRAVITZ: Can you tell me what that
6 is?

7 MR. GICALE: In the upper right-hand
8 corner, it's dated 11/9/93. It's some handwritten
9 notes, and I see the initials GAC at the top. Here,
10 I have an extra copy, as long as you don't retain it.

11 MR. KRAVITZ: I'll make sure I give it back
12 to you.

13 BY MR. GICALE:

14 Q Do you recognize this handwriting?

15 A Yes, I do.

16 Q Is it your own?

17 A It is.

18 Q The very top line, can you read that?

19 A Yes. "Telecon with GAC," which means it's
20 a telephone conversation I had with Allen Carver and
21 the date in the right corner is 11/9/93.

22 Q And the next line down, what does that say?

1 A I'm having some difficulty with the first
2 word. I've got to decipher that. I think it says
3 "ethics complaint."

4 Q And then what's after that?

5 A "Ethics complaint V" -- meaning against --
6 "Carmichael on official RTC (lawyer)."

7 Q These notes were prepared contemporaneous
8 with your conversation with G. Allen Carver on
9 November 9, 1993; correct?

10 A Yes.

11 Q Do you recall what this was about, this
12 "ethics complaint versus Carmichael"?

13 A No, I don't.

14 Q Were you aware of the fact that there was
15 someone in the RTC by the name of Carmichael that had
16 been involved in a review of nine criminal referrals
17 that came from the RTC to the Department of Justice
18 in the fall of '93?

19 A I think I was aware. I'm not sure whether
20 I became aware during this conversation or earlier.

21 Q Did you become aware at any time of the
22 fact that an individual by the name of Carmichael at

1 the RTC and perhaps another individual by the name of
2 Adams were involved in turning over documents -- RTC
3 documents to the Department of Justice pursuant to a
4 subpoena?

5 A Could I ask that you repeat that question.
6 I'm not sure I understand that.

7 Q Well, let me rephrase it.

8 At some point in time during this
9 investigation, was there some difficulty in obtaining
10 documents from the RTC, some difficulty -- did the
11 Department of Justice have difficulty obtaining
12 documents from the RTC?

13 A When you say Department of Justice, you're
14 including the United States Attorneys offices, too?

15 Q Right.

16 A That was my understanding.

17 Q And there were some discussions about that
18 in correcting that problem; is that correct?

19 A That's right.

20 Q And a Mr. Donohue, do you recall whether or
21 not a Mr. Donohue from the RTC was brought into the
22 discussions to try to take care of that problem?

1 A I do remember that, yes.

2 Q Was this telephone conference about the
3 problems with obtaining RTC records?

4 A I'm just reviewing the rest of this to see
5 whether it aides in my recollection.

6 (Witness reviewed the document.)

7 Now, could I ask you to repeat that
8 question.

9 MR. GICALE: Could you read back the
10 question.

11 (The reporter read the record as requested.)

12 THE WITNESS: I would say -- and I only
13 have the vaguest recollection of this conversation or
14 actually this -- this document refers to several
15 conversations. But I only have the vaguest
16 recollection. I would say yes, it generally related
17 to matters of obtaining documents from the RTC.

18 BY MR. GICALE:

19 Q And the specifics of this regarding an
20 ethics complaint about versus Carmichael, you don't
21 have any independent recollection of that?

22 A No, I don't.

1 Q I'm also going to show you what's marked
2 for identification as document 000336, and this is a
3 memorandum to you, to John Arterberry from Don
4 Mackay, Dwight Bostwick, Jim Nixon regarding status
5 report 12/14/93. Do you recall this memorandum?

6 MR. KRAVITZ: What is the date on this?

7 MR. GICALE: December 14, '93 -- you know,
8 actually, it refers to a status report 12/14/93. I
9 guess that's the date of the memo.

10 THE WITNESS: Yes, I do recall this.

11 BY MR. GICALE:

12 Q Directing your attention to the paragraph
13 2, "source contacts FBI," apparently there was some
14 source information with respect to the Hale
15 investigation, and at the end of this paragraph,
16 there's the following sentence. "The following is a
17 summary of the information Hale provided to the
18 source."

19 And then you have -- these things are
20 broken down for you, (a), (b) and (c). And the first
21 being (a), "bribery and kickback seems operated with
22 the collusion of state and federal officials in

1 Arkansas." Do you see that?

2 A Yes, sir.

3 Q Do you know what they were referring to
4 there?

5 A No, I don't.

6 Q How was this memo prepared for you? Who
7 prepared it? It says Mackay, Bostwick and Nixon.
8 How was this done --

9 A I think at this point, I'd just be
10 speculating. I can say that during this period, I
11 would get status reports by E-mail at times,
12 particularly when they were in Little Rock, and I
13 guess sometimes by hard copy. This appears, just
14 from the format, that it may have been a hard copy
15 that could have been given to me by the team.

16 On the other hand, it could have been an
17 attachment using our E-mail system under WordPerfect.

18 Q Were these daily reports you were
19 receiving?

20 A I had asked early on when we became
21 involved in the investigation for daily reports from
22 the team, for Mackay and Bostwick and Nixon. At some

1 point, and I believe it would be around the mid part
2 or the latter part of December, supervisory oversight
3 of this investigation shifted from me to Allen
4 Carver, and I'm not sure whether that process changed
5 or not in terms of the frequency of reports.

6 Q In any event, at this point in time, they
7 were answering to you and giving you these reports;
8 correct?

9 A I say yes because it's addressed -- the
10 memo is addressed to me. Otherwise, I'd have
11 difficulty placing the time when the investigation
12 shifted from me to Allen Carver.

13 Q Would it be safe to say that if they sent
14 you -- as they would send you these, if you had
15 questions, you were free to send them an E-mail back
16 or call them up and talk to them about the
17 information they had forwarded to you; correct?

18 A That's right.

19 Q Do you recall talking to them about this
20 particular information, and right now, I'm referring
21 to 2(a).

22 A I don't have any recollection of discussing

30

1 this specific allegation with them.

2 Q Do you recall discussing the source
3 referred to in the beginning of paragraph 2?

4 A I believe I did discuss the source with
5 them.

6 Q Did they give the name of the source?

7 A If they did, I don't recall now that they
8 did.

9 Q So today, you do not know the name of the
10 source?

11 A I don't.

12 Q With respect to item (b), "laundering of
13 drug trafficking proceeds through insurance companies
14 in Arkansas," was there a further explanation of
15 that?

16 A Not that I recall.

17 Q Do you know any other details about that?

18 A No, I don't.

19 Q With respect to (c), "payoffs to Arkansas
20 public officials by a Little Rock attorney who has
21 now moved to Washington," do you know what that
22 refers to?

1 A No, I don't.

2 Q Did they name the Little Rock attorney?

3 A I don't recall that they did, no, sir, and

4 I don't know that they knew, "they" meaning any of
5 the people in the trial team.

6 Q Did they just -- and I guess that's one of
7 my concerns. Was that the way the information was
8 given to them, or were they given more specific
9 information, and it's just not a part of this memo?

10 A The way that they have presented the
11 information leads me to conclude this is what they
12 knew about it at the time, and I'm not sure how much
13 more detail they were able to obtain.

14 Q Do we have any -- are you aware of any
15 other memos or any other discussions -- any other
16 memos in the department or any other discussions that
17 occurred which supplemented this information?

18 A I'm not, no.

19 Q And today you have no independent
20 recollection of any additional information that you
21 received orally; is that correct?

22 A Other than, I guess, within the past

1 several days, the department -- I think this was
2 relayed to me for a receipt of documents having to do
3 with the name of an individual named Lassiter. I
4 don't know whether that -- it seems to me that was in
5 the context of allegations perhaps involving
6 laundering or what have you. Perhaps there's a
7 connection between that and this, but at the time I
8 saw this query about Lassiter, it did not ring any
9 bells with me. But I simply mention that because
10 there could be a connection between the two.

11 Q But in terms of an Arkansas public
12 official, a payoff by a Little Rock attorney, do you
13 recall receiving any additional information about
14 that report?

15 A No, sir.

16 MR. KRAVITZ: Before I give this back to
17 you, I wanted to make an observation about this
18 document. If you look at the very end of paragraph
19 (c), there's a semicolon there. It indicates to me
20 there may actually be another page or more to this
21 document. This may not be the whole document, and
22 that may be one reason why Mr. Arterberry's

1 recollection is refreshed only to the extent that it
2 is by this document. I mean, I just don't know.

3 THE WITNESS: I noticed the same thing, and
4 that was my assumption, too, that there must have
5 been a second page to this document.

6 MR. GICALE: And unfortunately, I do not
7 have a second page, and we have not seen a second
8 page.

9 MR. KRAVITZ: I can't help you either. I
10 haven't seen this before Lou just passed it over.

11 THE WITNESS: I might read this one more
12 time to see --

13 BY MR. GICALE:

14 Q Oh, go ahead.

15 A It might be helpful to see if there are
16 other pages, whether there's a second page or second
17 and third page to this. That might help me in
18 putting this thing -- both refreshing my recollection
19 and putting it into some context.

20 Q Now, with respect to your deposition before
21 the House, and I'm specifically referring, I believe,
22 to page 79 and -- the top of page 79, and actually,

34

1 it starts on the bottom of page 78.

2 A Yes, sir.

3 Q You were asked the question: "Sure. Do
4 you have a specific recollection of a specific
5 conversation with any member of the trial team, in
6 substance? We had this earlier matter, and earlier,
7 you know, we reached a certain conclusion, but maybe
8 we should take a fresh look at this.

9 "Answer: No, and I think the reason I
10 don't recall the conversation and I think part of the
11 reason why is that this matter was never in the fraud
12 section. It had not been in the fraud section
13 before, and I don't take McDougal's memo as -- and I
14 would not -- when I did receive it, I would not have
15 taken that as some action on a matter."

16 MR. SGRO: If you can put it into context a
17 little bit, I think it might be helpful when you
18 speak about this matter for the record's purposes, if
19 you can clarify what "the matter" was defined as in
20 the context of that deposition.

21 BY MR. GICALE:

22 Q At that point in time, you were talking

1 about -- I believe you were asked about criminal
2 referral C0004; is that correct?

3 A Yes, because I think on page 78 near the
4 middle part of the page, there's a question "was
5 there ever a conversation you ever had with any
6 member of the trial team to possibly go back and look
7 at the original referral in light of this new
8 information that was being developed from the Hale
9 investigation?" I think the reference to the
10 original referral probably means C0004.

11 Q So it was your position at the time that
12 the fraud section never had the matter; is that
13 correct? The matter was never in the fraud section
14 to make a decision on?

15 A Prior to the time that the fraud section
16 was assigned the recusal?

17 Q Right, in 1993.

18 A That's right.

19 Q And as you stated in that deposition, "as
20 far as I was concerned, we're taking a first look at
21 it because it was the first time we had it within the
22 section."

1 A Yes, sir.

2 Q So you did not view the action -- any
3 action taken with respect to the Mark MacDougall memo
4 as action indicating that the matter was before the
5 fraud section, the criminal referral was before the
6 fraud section for -- the responsibility for
7 prosecuting that matter was before the fraud section;
8 is that correct?

9 A That's correct.

10 Q Is that what you're attempting to say?

11 A That's right, and perhaps an explanation
12 now would be helpful in how I was arriving at that
13 conclusion.

14 Q Go ahead.

15 A I don't think this is a term of art, but to
16 us, it's very important whether a matter is assigned,
17 that is, whether the fraud section opens a matter or
18 in the case of the MacDougall memo, we're simply
19 providing a view, an assessment of a matter that may
20 reside elsewhere.

21 Up until the time that the United States
22 Attorney's office was recused later in 1993 and the

1 entire Madison Guaranty matter was opened in the
2 section, we had no operational responsibility for any
3 of those referrals. They had been made to the United
4 States Attorney's office, and they resided there.

5 And although I was not involved in the
6 preparation or review of the MacDougall memo, the
7 memorandum at the time, my understanding from it,
8 from having seen it later, is that it was simply
9 presenting an assessment of that referral, and I
10 think that was later used perhaps in the
11 decisionmaking, but it was not -- it was not a
12 memorandum that was taking any action on the referral
13 within the fraud section because it was not -- and I
14 can say this in a technical sense -- it was not
15 within our jurisdiction to act on it.

16 (Pause.)

17 Q Now, eventually, there came a time in the
18 fall of 1993 when it did become your section's
19 responsibility to act on that referral as well as the
20 other nine referrals; correct?

21 A Yes, sir. When you say "act on that
22 referral as well as the others," I think all came

1 within what we considered to be the open matter that
2 we were now in charge of, yes, sir.

3 Q And you considered all of them open and
4 subject to review at that point; correct?

5 A Subject to review and whatever
6 investigation or leads or actions that needed to be
7 taken, that's correct.

8 Q With respect to the Small Business
9 Administration, you testified earlier that you had
10 some conversations with Allen Carver about his
11 testimony yesterday with respect to the Small
12 Business Administration and some documents that were
13 delivered to the White House; correct?

14 A That's correct.

15 Q What do you recall about that occurrence,
16 and when was the first time you recall something
17 happening -- discovering that that had occurred?

18 MR. SGRO: When you ask him what he
19 recalls, you're talking about his independent
20 knowledge of the SBA matter?

21 BY MR. GICALE:

22 Q Yes, and to the extent -- I can begin to

1 give you some documents, but why don't you give me
2 your independent recollection at this point.

3 A My recollection is that early on in the
4 time that we were beginning in the fraud section our
5 investigation, Don Mackay or other members of the
6 trial team became aware that the Small Business
7 Administration was -- my recollection is I think they
8 were conducting an investigation of loans that had
9 been made to a small business under the SBA program.

10 Q "They," the SBA?

11 A The SBA. And I think either the SBA
12 attorney, and I think that was Mark Stephens, called
13 Mr. Mackay or somehow the two of them had some
14 communication, some contact, and it was from that I
15 think my involvement started.

16 Q I'm going to show you what's marked for
17 identification -- again, the only number I have here
18 is JDA 000108, and it's handwritten notes dated
19 November 8, 1993. It's a copy of these notes. Is
20 this your handwriting?

21 A Yes, sir.

22 Q And that's with respect to a meeting with

1 the SBA with respect to this issue?

2 A It is, yes.

3 Q Do you recall who was present at that
4 meeting?

5 A I'm just reviewing the document to see
6 whether that assisted me. I believe that this was a
7 meeting in Allen Carver's office, and I believe it
8 was attended by, I think, Mark Stephens, who is
9 identified here as the associate general counsel at
10 the SBA. I think he was there. I was there. There
11 may have been someone from FBI headquarters, some
12 supervisory special agents from FBI headquarters
13 present also. It seems to me at some meeting with
14 Mark Stephens they were present.

15 But often, my custom is to indicate up in
16 the upper left-hand corner under that meeting heading
17 who was present. I did not in this instance, so I
18 think at this point, my best recollection, I
19 certainly placed Mark Stephens there.

20 Q Directing your attention one, two, three,
21 four lines down, where it says -- what does it say on
22 the fourth line down?

1 A Inside the parentheses?

2 Q No, I'm sorry, the third line.

3 A "Same as set delivered to Congress."

4 Q What did you mean by that?

5 A I think at this meeting, Mark Stephens had
6 brought with him documents from the SBA, and I think
7 what he had told us is that these documents are the
8 same or identical to a set that had been delivered to
9 a Congressional, and I have in parentheses here
10 "House committee."

11 Q What documents were these?

12 A Again, my recollection is that these
13 documents related to the Small Business -- the SBA
14 loans to Hale's small business or his investment
15 company, which under the SBA program was eligible for
16 the loans.

17 Q Were these loan documents, or were they
18 summaries of interviews, or do you recall?

19 A I may be able -- by reviewing this
20 document, I may be able to refresh my recollection on
21 that.

22 Q Go ahead, take the opportunity to review

1 it.

2 A About the midpoint of this document right
3 in the center, there's the reference "these docs
4 concern Cap Management -- all docs from headquarters
5 SBA (SBIC program)."

6 That reinforces my impression when I first
7 read this, that the document we were first looking at
8 had to do with the SBA loans to Hale's small business
9 company or to his investment company.

10 Q Was the report in this group of documents,
11 or was it just promissory notes or --

12 A I think these were transactional documents,
13 yes. I don't remember. When you say a "report," I
14 think it was more the documents by which Hale would
15 request and receive the loans under the Small
16 Business Administration program.

17 Q Now, under that fourth line, it seems to
18 say "same as set delivered to the White House"; is
19 that correct?

20 A That's correct.

21 Q So the White House -- well, tell me what
22 that means.

1 A My recollection is that Stephens told us
2 that he had received a request after -- I think it
3 was after the documents had been delivered to the
4 Congressional committee. He had received a request
5 from the White House for a set of the documents to
6 see what had been sent up there, "up there" meaning
7 up to the committee.

8 Q Did he tell you who at the White House had
9 requested that set of documents?

10 A My recollection is that he did, and I'm not
11 sure whether -- I think it would have been in this
12 meeting, but I don't see any names on this. The name
13 Eggleston sticks in my mind, who I think was in the
14 counsel's office at the White House.

15 Q Did Mr. Carver have any reaction to that?

16 A He did, yes.

17 Q Did he give any direction to Mr. Stephens
18 with respect to these documents?

19 A He did, and I recorded that, I guess,
20 beginning the sixth line in my notes where I have the
21 reference to GAC. It says "get documents back. If
22 attorney-client, get back sealed if copies get back.

1 Should not be apprised of investigation."

2 Q Did Mr. Carver indicate why he wanted
3 Mr. Stephens to get these documents back?

4 A My recollection is yes, he did.

5 Q And what was the reason?

6 A That these records were relevant to our
7 investigation and in order for us to be able to
8 investigate this fully, we had to have all relevant
9 documents, and we viewed these as relevant documents.

10 Q Was he concerned that the White House --
11 did he ask to retrieve the documents from the House
12 committee as well?

13 A No.

14 Q Why was he concerned about documents going
15 to the White House?

16 A I think by that time -- I guess even from
17 the first referral, we were aware that the
18 allegations that Hale had made and the allegations
19 contained in C0004 had referred to then-Governor
20 Clinton and his wife as investors.

21 Q And therefore --

22 A And therefore, these documents could be

1 relevant to our investigation of all of those
2 referrals and the allegations that had been made.

3 Q And you did not -- Mr. Carver did not think
4 it would be appropriate for the White House to have
5 possession of them; is that correct?

6 A That's one way, I guess -- that's one
7 conclusion that could be drawn. I guess another
8 conclusion is we thought we should have those
9 documents. That is, we should have the SBA
10 documents.

11 Q You had copies of them. They brought them
12 to the meeting; correct?

13 A We weren't certain what we had and what we
14 didn't have. We thought the SBA had provided
15 documents to the White House. We needed to see those
16 documents to ensure that we had everything relevant
17 to the Hale loans.

18 Q I'm going to show you what's marked as
19 document number 000391. This is a November 20, 1993
20 memorandum to file from G. Allen Carver regarding a
21 telephone conversation with Mark Stephens, and I
22 believe in it he's referring to a conversation

1 beginning at 2:35 on November 17, 1993.

2 Have you ever had an opportunity to review
3 this memorandum?

4 A I believe I received a copy of this
5 sometime around the time it was prepared.

6 Q Do you recall Mr. Carver telling you that
7 he had asked Mr. Stephens who initiated the
8 request -- strike that.

9 Do you recall Mr. Carver inquiring how the
10 SBA had turned over documents to the White House, and
11 that Mr. Stephens had indicated that he did not have
12 firsthand knowledge, but based on conversation with
13 general counsel, he believed the White House
14 requested the materials?

15 A I have a general recollection of that, yes.

16 Q And does this document further refresh your
17 recollection with respect to the individual in the
18 White House who the enclosures from the SBA material
19 were given to? And I direct your attention to
20 document 000392, the first full paragraph, fourth
21 line.

22 A It does. There's a reference there to Neil

1 Eggleston of the White House counsel's office.

2 Q That was the Mr. Eggleston you were
3 referring to earlier?

4 A Yes, sir.

5 Q I'm going to show you what's marked for
6 identification as document number 000385. It's dated
7 November 20, 1993. It's to the files from G. Allen
8 Carver regarding telephone conversations with Mark
9 Stephens, and this is with respect to a November 19,
10 1993 conversation with Mark Stephens; is that
11 correct?

12 A Yes, sir.

13 Q And did Mr. Carver indicate -- did you get
14 a copy of this memo as well?

15 A I believe I did. I think that Mr. Carver
16 had copied me on these.

17 Q Or in the alternative, did he convey to you
18 some of the information in this memo, specifically
19 the fact that Mr. Eggleston said that he would have
20 to discuss -- strike that.

21 Specifically, the fact that Mr. Stephens
22 had spoken to Mr. Eggleston and with respect to the

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1 return of these documents and Mr. Eggleston said he
2 would have to discuss the matter with the Deputy
3 Attorney General and would call Stephens back earlier
4 in the week?

5 A Yes, I do recall that.

6 Q Did Mr. Carver tell you that?

7 A Yes, he did.

8 Q Did Mr. Stephens also tell you that, if you
9 recall?

10 A I'm not sure that I -- I don't recall that
11 he did.

12 Q Did either of those people explain to you
13 why Mr. Eggleston felt he had to go to the Deputy
14 Attorney General before he responded to this request?

15 A I don't know that Mr. Stephens did, and I
16 don't know -- Allen Carver and I may have discussed
17 it, but it would have -- and this becomes more
18 speculation than it does recollection.

19 Q Well, if you know.

20 A Well, the policy, I think, that existed
21 then and I think has been observed through a number
22 of administrations is that contacts with the White

1 House -- contacts between the White House and the
2 Justice Department generally occur between either the
3 Attorney General or the Deputy Attorney General; that
4 is, at the most senior levels and certainly not down
5 at the line unit levels.

6 Q This was a contact between the SBA and the
7 White House; is that correct?

8 A Yes.

9 Q And Mr. Eggleston was refusing to turn
10 these over until he talked to the Deputy Attorney
11 General; is that correct?

12 A I'm not sure he was -- I don't know without
13 reading this entire memo. I think that the reference
14 here in the first paragraph is that Mr. Eggleston
15 said he would discuss the matter with the Deputy
16 Attorney General and would discuss the matter with
17 Mr. Stephens further early in the week. I believe
18 that that was in the context of deciding whether to
19 return the documents.

20 Q So pursuant to Mr. Carver's request,
21 Mr. Stephens did indeed go to Mr. Eggleston, request
22 the documents?

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1 A Yes, sir.

2 Q And now he was indicating that before he
3 would turn them over, he would discuss the matter
4 with the Deputy Attorney General; is that correct?

5 A Yes.

6 Q Now, the Deputy Attorney General at that
7 time was Philip Heymann; correct?

8 A That's right.

9 Q I show you what's marked for identification
10 as document 000380, a document dated November 21,
11 1993 to the files from G. Allen Carver regarding
12 conversation with Rick Wade. The conversation is
13 dated November 19, 1993. Were you aware of that
14 conversation?

15 A I think I became aware of this perhaps
16 shortly after the conversation occurred.

17 Q Who was Mr. Wade?

18 A Mr. Wade, at the time, was a supervisory
19 special agent in FBI headquarters. He headed with
20 the title chief of the government fraud unit, which
21 at that time was one of the units within what was
22 known as the financial crime section, which is part

1 of the criminal investigative division of the FBI.

2 Q Did Mr. Wade express concern over the
3 possibility that the White House SBA action, however
4 well-intended, could look like White House
5 intervention?

6 A I'm not sure I had any independent
7 knowledge of that. According to Mr. Carver's
8 memorandum, he did. Today, I don't remember that he
9 expressed that concern.

10 Q Did Mr. Carver discuss with you the courses
11 of action for discussion and in particular, a letter
12 from the Department of Justice to the White House
13 and/or an FBI interview of Mr. Eggleston?

14 A My recollection is that we did discuss, I
15 think, some courses of action we could take regarding
16 the documents and the White House request for those
17 records and their return.

18 Q Did Mr. Carver think that it was
19 appropriate for the FBI to interview Mr. Eggleston
20 with respect to this matter?

21 A My recollection is he did, and that's
22 without reviewing the exhibit you have before me.

1 Q Why don't you take an opportunity to review
2 it.

3 (Witness reviewed the document.)

4 A I note on the first page of this exhibit,
5 in the last paragraph on that first page, this is
6 Mr. Carver speaking. He said "I further mentioned
7 that in my view the question was not whether to
8 interview Mr. Eggleston but when. I told Mr. Wade
9 that an interview of Mr. Kennedy should also be done
10 and an investigation to get his details of the
11 conversations with Randy Coleman, David Hale's
12 attorney."

13 Q Why is it Mr. Carver wanted
14 Mr. Eggleston -- was concerned about interviewing
15 Mr. Eggleston?

16 A I think to establish the reasons for his
17 asking for the documents.

18 Q Was it to address the concerns that
19 Mr. Wade had expressed with respect to potential
20 White House intervention?

21 A I think that, in part, and also to ensure
22 the integrity of our investigation and the perception

1 of it, that it was being conducted in a fair,
2 independent and impartial way.

3 Q To address the concern with respect to the
4 perception that the White House was not only
5 interfering with the SBA, but perhaps the Department
6 of Justice?

7 A I guess that's right. That could be a
8 perception, that's right.

9 Q Mr. Carver was concerned that your office
10 act as quickly as possible and memorialize these
11 conversations, and your actions; correct?

12 A Yes, sir.

13 Q Now, did you and/or Mr. Carver come to some
14 agreement with the FBI to, in fact, make arrangements
15 with the FBI to interview Mr. Eggleston and
16 Mr. Kennedy and anyone else with respect to this?

17 A I think in terms of independent
18 recollection, I just can't remember that it was
19 accomplished. My impression is that we did have
20 those interviews, that it was a resolution that was
21 acceptable to us, but without reading --

22 Q My question now is, you wanted these

1 interviews to occur at that time, and at that time
2 I'm talking about November 21, 1993; correct?

3 A Yes, sir.

4 Q Now, did Mr. Stephens indicate to either
5 you or Mr. Carver that he had talked to someone in
6 the SBA ethics counsel's office on the propriety of
7 the request from the White House, if you recall?

8 MR. KRAVITZ: Do you mean at that meeting
9 that Mr. Arterberry has testified about?

10 MR. GICALE: At any time, at that meeting
11 or sometime subsequent.

12 THE WITNESS: I do. I do recall that at
13 some point, I think, Mr. Stephens told me, he may
14 have told Mr. Carver, it may have been at our
15 meeting, that before he had provided these documents,
16 he had obtained an opinion from an ethics officer at
17 SBA.

18 BY MR. GICALE:

19 Q And do you recall what the ethical opinion
20 was?

21 A I think that the opinion was one that it
22 was permissible to provide those.

1 Q Do you know who the ethics counsel was that
2 rendered this opinion?

3 A No, sir, I don't remember. He may have
4 told us the name, but I don't remember that now.

5 Q Now, do you know whether or not
6 Mr. Stephens or the SBA notified the FBI prior to
7 delivering these documents to the White House?

8 A I don't believe they did. I think the
9 first time we learned of that was in the meeting that
10 Allen Carver and I had with Mr. Stephens.

11 Q After Mr. Carver requested that the FBI
12 retrieve the report given to the White House, did he
13 also request that the SBA refer any such future
14 requests to the FBI?

15 A I think in your question you asked after
16 the FBI retrieved the documents. I think you meant
17 the SBA to retrieve the documents.

18 Q Correct. The SBA to retrieve the
19 documents. Thank you for correcting it.

20 A If I understand your question, it's whether
21 Mr. Carver asked that the SBA refer any future
22 requests from the White House to the FBI?

1 Q Right.

2 A I'm not -- I don't remember any
3 instructions like that. I think -- and again, this
4 is my best recollection. It seems to me that we
5 asked if there were any future requests from the
6 White House for documents or for material relating to
7 these loans, that we be advised before the SBA act on
8 that. Now, whether we referred it to the FBI or let
9 us know about it, I just can't remember now.

10 Q Now, did Mr. Wade from the FBI indicate to
11 you and/or Mr. Carver that again, he was concerned
12 about the SBA's release of their report to Congress
13 and the White House and the possible perception that
14 individuals in the White House might be attempting to
15 influence a pending criminal investigation?

16 A I don't remember Mr. Wade saying that, and
17 I'm not sure that I even had any conversations with
18 him at the time.

19 Q Do you recall Mr. Carver indicating that to
20 you, that that was Wade and/or the FBI's concern?

21 A I believe Mr. Carver and I talked about
22 Special Agent Wade's reaction, but again, I don't

1 have any -- I can't remember that he specifically
2 referred to a special concern about the documents or
3 about the investigation.

4 Q In addition to Mr. Eggleston, did
5 Mr. Carver also suggest that SBA officials who made
6 the decision to disseminate the SBA report be
7 interviewed by the FBI?

8 A I believe we -- I believe he did. Again,
9 this is raw recollection, but I believe that we
10 wanted to ensure that we had the interviews necessary
11 so that we would have a record of how these events
12 unfolded.

13 Q Did Mr. Carver also agree that an interview
14 should be conducted with Bill Kennedy, Associate
15 Counsel to the President and with Bernie Nussbaum,
16 Chief White House Counsel?

17 A I seem to recall Mr. Kennedy's name. I
18 don't remember whether Mr. Nussbaum was -- I guess my
19 best recollection is that the recommendation was that
20 all persons in the White House counsel's office
21 involved in the request or in the review of those
22 documents be interviewed, but that's without the

1 benefit of refreshing that recollection. I think
2 that's the best recall I have on it.

3 Q On or about November 20, 1993, do you
4 recall Mr. Carver contacting the FBI and advising
5 them that this matter; that is to say, the return of
6 these documents from the White House and how they
7 obtained them had been discussed with Gerald McDowell
8 of the fraud section and Phil Heymann, Deputy
9 Attorney General, and then Heymann concurred with the
10 need to interview White House officials by the FBI
11 agents?

12 A I was generally aware. I think Mr. Carver
13 had made me aware that he had obtained that
14 concurrence.

15 Q And on that date, were you aware of the
16 fact that the officials to be interviewed by the FBI
17 were to include Mr. Eggleston, Mr. Kennedy, Mr. Bruce
18 Lindsey, White House media relations and
19 Mr. Nussbaum?

20 A I don't have a recollection today that
21 specific. I remember generally it was the persons we
22 had identified in the handling of the documents, but

1 I don't remember all of those people, no, sir.

2 Q I'm going to show you what's marked for
3 identification as exhibit number 000379.

4 MR. KRAVITZ: Lou, can I ask you, I wasn't
5 at Mr. Carver's deposition, but I assume that he was
6 questioned extensively about all of this stuff that
7 you've been asking Mr. Arterberry about, and I guess
8 I just don't see the utility of what you're doing.

9 MR. GICALE: Well, can we go off the record
10 for a second? I was not at Mr. Carver's deposition
11 either. To some extent, and I think that
12 Mr. Arterberry was a part of some of these
13 conversations and discussed this. It was something
14 he was involved in, and I think --

15 MR. KRAVITZ: I actually think the
16 testimony is to the contrary, that Mr. Arterberry was
17 a part of very few of these conversations and was
18 being kept informed to some limited extent by
19 Mr. Carver and perhaps others, but I just -- we've
20 already deposed Mr. Carver. I know that deposition
21 lasted for about eight hours and --

22 MR. GICALE: That's true.

1 MR. KRAVITZ: And I just can't imagine that
2 Mr. Arterberry has information to provide on the
3 subject that can compare with the quality of
4 Mr. Carver's information, no offense to
5 Mr. Arterberry.

6 THE WITNESS: No offense taken.

7 MR. GICALE: I believe it's relevant, and I
8 believe we need to explore it. So I intend to go
9 ahead with this. I'll try to minimize it to the
10 extent that I can.

11 BY MR. GICALE:

12 Q Now, again, document number 000379, this is
13 a memo to file from G. Allen Carver with respect to a
14 telephone conversation with Rick Wade dated
15 November 22, 1993.

16 Do you recall at that point whether or not
17 you found out -- you discussed with Mr. Carver or you
18 found out whether or not the FBI had indeed set up
19 interviews with Mr. Eggleston and the other
20 individuals named, including Bruce Lindsey and
21 B. Nussbaum, Bernie Nussbaum?

22 A Mr. Carver advised me of this during this

1 period. It seems to me it would have been, I would
2 say, either that day or within -- essential within
3 the period when these events were unfolding, he told
4 me about this, yes, sir.

5 Q I'm going to show you what's marked for
6 identification as exhibit number 000377. This is a
7 memo dated November 22, 1993, and this is to files
8 from you; correct?

9 A Yes, sir, it is.

10 Q And it's regarding a telephone conversation
11 with Mark Stephens; correct?

12 A That's correct.

13 MR. KRAVITZ: What's the date on that?

14 MR. GICALE: November 22, 1993.

15 BY MR. GICALE:

16 Q Do you want to take a moment to review
17 that?

18 A Yes, sir, I appreciate that.

19 Q Does this memo refresh your recollection of
20 a conversation with Mark Stephens on November 22,
21 1993?

22 A Yes, it does.

1 Q And in that conversation, did he relate to
2 you that Mr. Eggleston had said that he talked to
3 people at the Department of Justice on Friday and
4 wanted to get the documents back to the SBA as soon
5 as possible?

6 A Yes, sir.

7 Q And did he describe to you, in fact, how
8 Mr. Eggleston returned those documents to him?

9 A He did.

10 Q And how did Mr. Eggleston return them to
11 Mr. Stephens?

12 A I think I referred to one attempt to
13 arrange a delivery -- I thought at one point he tried
14 to make a delivery earlier, but it turned out that
15 the most expeditious and convenient way for him to
16 drop the documents -- to get them back to
17 Mr. Stephens would be to drop them off on his,
18 Mr. Eggleston's way to church, and that's how it was
19 accomplished, according to Mr. Stephens.

20 Q And so Mr. Eggleston drove by the SBA
21 offices and Mr. Stephens went outside to receive the
22 documents; is that correct?

1 A That's what Mr. Stephens told me, yes.

2 Q And did Mr. Stephens also indicate to you
3 that Mr. Eggleston responded that he had made one
4 copy of the last examination report dated March 21,
5 1993 to read?

6 A He did, yes.

7 Q Now, when he referred to an examination
8 report, do you know what he was talking about?

9 MR. KRAVITZ: Eggleston or Stephens?

10 MR. GICALE: Stephens and/or Eggleston.

11 MR. SGRO: For clarity, in 377 the line
12 reads "he asked Mr. Eggleston whether he had made any
13 copies. Mr. Eggleston responded that he had made one
14 copy of the last examination report dated March 21,
15 1993 to read."

16 BY MR. GICALE:

17 Q Do you know what examination report he may
18 have been referring to?

19 A I can tell you what I took that to mean.

20 Q Okay. Tell me what you took it to mean.

21 A I understood that to be the SBA examination
22 report of the investment company that Mr. Hale was

1 running in Arkansas.

2 Q Earlier I asked you in terms of the
3 documents that the SBA had said they provided to
4 Congress, whether -- what kinds of documents were in
5 there, and I asked you whether there were reports,
6 and now I ask you again, when this refers to report,
7 what kind of document are we talking about?

8 A This does refresh my recollection, and I
9 think it makes clear that the records included
10 examination reports. It's still my impression that
11 the records -- that among these records were
12 transactional documents that recorded loans, payments
13 on loans in the operation of his investment company,
14 Mr. Hale's investment companies.

15 Q And when you talk about reports, you did
16 see these documents, reports dealing with what,
17 conclusions by the SBA officials with respect to how
18 the documents were handled, or what were they?

19 A I'm not sure if I ever saw these reports.
20 My impression of these reports is that the -- the
21 examination reports is that they were examinations
22 conducted by the SBA to determine how the investment

1 company was being operated and whether it was in
2 compliance with the Small Business Administration
3 program for these companies.

4 Q Mr. Stephens told you that Mr. Eggleston
5 claimed he had later shredded that copy; is that
6 correct?

7 A That's what Mr. Stephens said, yes.

8 Q Did Mr. Stephens indicate to you whether or
9 not he had inventoried the documents he received from
10 Mr. Eggleston?

11 MR. KRAVITZ: Are we still talking about
12 the November 22 telephone call?

13 MR. GICALE: Yes.

14 THE WITNESS: In that call, and I refer to
15 it on the second page of the memorandum, he told me
16 he had not inventoried those after he had received
17 them from Mr. Eggleston.

18 BY MR. GICALE:

19 Q And did he tell you where he kept the
20 documents after he received them?

21 A He told me he had put them under his desk.

22 Q Do you know when it was that he

1 subsequently turned those documents over, either to
2 your office or the FBI?

3 A I don't remember exactly when that
4 occurred, but my best recollection is that within a
5 short time after this conversation, he turned those
6 over to an FBI agent, he Mr. Stephens, turned those
7 over to an FBI agent.

8 Q The same day or the next day?

9 A I'm not sure. I can't remember that.

10 Q I show you what's marked for identification
11 as 000410. Are these your handwritten notes -- and
12 this is a document which says at the top "Telecon
13 with Mark Stephens. Date 11/22/93." Are these the
14 notes that result in the typewritten notes dated
15 November 22, 1993?

16 A Yes, sir.

17 Q I'm going to show you another document
18 numbered 000 --

19 MR. SGRO: 365.

20 BY MR. GICALE:

21 Q -- 000365. This is a memorandum to file
22 from Jim Nixon, trial attorney, fraud section,

1 regarding Small Business Administration meeting
2 November 24, 1993.

3 Now, apparently Mr. Nixon had a meeting at
4 your offices with a number of people, including Don
5 Mackay, Dwight Bostwick, Jim Nixon, Mark Stephens,
6 Mr. Spotila, S-p-o-t-i-l-a, who was general counsel
7 from SBA and ethics officer Marty Techler and deputy
8 associate general counsel Mark Vita from SBA along
9 with special agent Dana Gillis from the FBI.

10 Were you aware of that meeting?

11 A I don't remember at this point -- I don't
12 have any independent recollection of it, but I would
13 have been aware of it.

14 Q Was there an attempt made at that
15 meeting -- do you know whether or not there was an
16 attempt made at that meeting to confirm whether or
17 not the documents that Mr. Eggleston had returned
18 compared to the documents that the SBA had or had
19 transferred to Congress?

20 A I note that in the next to last paragraph
21 of this document, Mr. Nixon states that Mr. Stephens
22 confirmed through a comparison that Mr. Eggleston had

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1 returned a complete set of documents.

2 Q Now, in the third paragraph, last sentence,
3 it says, "all the documents returned by Mr. Eggleston
4 were placed under the custody of SA Gillis." Would
5 that have been the turnover of documents that you
6 earlier referred to? I note this is November 24,
7 1993, and Mr. --

8 A 29 -- oh, I see, November 24 meeting, I'm
9 sorry.

10 Q And Mr. Stephens -- you had this
11 conversation with Mr. Stephens -- a conversation with
12 him on November 22, 1993?

13 A Yes, sir, and if my recollection is
14 correct, Mr. Stephens had called me. I think he was
15 out of town, I think in Dallas, Texas on business
16 travel, and I'm not sure -- I think he was not
17 returning until the 23rd. My notes you just showed
18 me a few minutes ago might reflect when he planned to
19 return, I think on the second page.

20 Q Do you want the typewritten?

21 A The handwritten.

22 Q You're referring to document number 000411?

1 A Yes, sir, and on the third line from the
2 bottom, it says -- my kind of shorthand notetaking --
3 will be returning to Washington tomorrow afternoon,
4 and I think that would be the -- I think those notes
5 are dated the 22nd, so that would be the 23rd, which
6 would be -- he would be returning the day before this
7 meeting.

8 Q So some two days later, the SBA turned over
9 the documents?

10 A Yes, sir. And I think an earlier question,
11 you had asked me whether I was aware of this meeting
12 in the fraud section, and I haven't carefully read
13 this document, but I'm not sure from the memo that it
14 took place in the fraud section. More likely, I
15 think it probably took place at the SBA offices. I
16 don't see that it specifies one way or the other.

17 Q Do you recall whether it was learned -- did
18 you later find out that the SBA had, in fact, sent
19 another letter, one from Erskine Bowles,
20 administrator to the SBA, to the honorable John
21 LaFalce?

22 A I have a vague recollection of that, and I

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1 see that it's --

2 Q I'm sorry, and Mr. Spotila had faxed a copy
3 of that to Mr. Eggleston?

4 A I have a vague recollection of that, and I
5 see that Mr. Nixon refers to that in the last
6 paragraph of his memorandum.

7 Q And once again, it was suggested that the
8 FBI seek the return of the letter?

9 A Yes, sir, according to Mr. Nixon it was.

10 MR. KRAVITZ: Can we take a five-minute
11 break.

12 MR. GICALE: You know what? I think I'm
13 almost done so --

14 MR. KRAVITZ: We're still going to need to
15 take a break.

16 MR. GICALE: Then it would be a good break
17 in terms of what I have, if you want. Do you need
18 it?

19 MR. SGRO: I don't care whether we take a
20 break now or whenever.

21 MR. KRAVITZ: I'd rather take a five-minute
22 break. My questioning is going to be very brief, so

1 it's not like we're going to need another break.

2 (Recess.)

3 BY MR. GICALE:

4 Q With respect to the interviews of the White
5 House people by the FBI, do you know whether or not
6 those interviews ever occurred and whether there was
7 ever a report with respect to those interviews?

8 A My best recollection is that they did take
9 place. I'm not sure whether I ever reviewed any
10 reports of interviews or not.

11 Q Do you know when they took place?

12 A No. I just assumed they would have taken
13 place shortly after the conversations that Allen
14 Carver had with Rick Wade and perhaps right after the
15 meeting, that November 24 meeting at SBA. But again,
16 that's just --

17 Q Do you know who was interviewed?

18 A -- an assumption.

19 Q Do you know who was interviewed?

20 A No, I don't, not for certain. I assume
21 that each of the persons identified in the recorded
22 conversation Mr. Carver had with Mr. Wade, that those

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1 took place, and that's my recollection, is that the
2 Washington metropolitan field office was going to
3 conduct those interviews. But beyond that, I don't
4 think I have any independent recollection that they
5 took place, and I'm not sure I ever saw the reports
6 of the interview.

7 Q And do you know of anything else that
8 occurred with respect to your offices or the FBI's
9 investigation with respect to these witnesses at the
10 White House? Is there anything else that your
11 section did with respect to that, any other steps
12 that you took?

13 A I think I was generally aware at some point
14 that -- I think we were attempting to get
15 information -- I don't want to confuse my chronology
16 here -- but it seems to me we had contacts -- when I
17 say "we," the Department of Justice had contacts with
18 the White House about information relating to
19 Mr. Foster. I'm not sure when that occurred. That
20 would be the other area.

21 Q But in terms of the contacts,
22 Mr. Eggleston, the contacts with respect to these SBA

1 documents, do you know of any further action your
2 section took with respect to those?

3 A No, I don't.

4 Q And the White House receipt of those
5 documents?

6 A Beyond the arrangements for the interviews
7 of those individuals, no, sir, I don't.

8 Q Now, with respect to criminal referral
9 C0004, did you or anyone in your office have contacts
10 with Webster Hubbell regarding that referral?

11 A I had no contacts with Mr. Hubbell about
12 any matters having to do with these referrals, and
13 I'm not aware that anybody in the office had any
14 contacts with them.

15 Q Do you know whether or not Mr. Hubbell
16 received a copy of criminal referral C0004?

17 A No, sir, I don't know whether he did or
18 not.

19 Q Do you know whether or not he received
20 copies of the other nine referrals?

21 A I do not.

22 Q Did you or your section make copies of

1 those referrals for him?

2 A Not to my knowledge.

3 Q Did you or anyone in your office have any
4 contacts with any present or former employee of the
5 White House relating to criminal referral C0004?

6 A Beyond investigative contacts? I assume
7 you're not talking about any interviews that the FBI
8 might have done.

9 Q Were there any interviews prior to the time
10 the Independent Counsel took this over?

11 A I'm not sure. I think that the interviews
12 on the SBA documents -- I view that all within the
13 realm of the referrals.

14 Q Other than those.

15 A And a request for any information having to
16 do with Mr. Foster, I'm not aware of anything beyond
17 that -- well, you specified just the White House
18 personnel; is that right?

19 Q Any present or former employee of the White
20 House relating to criminal referral C0004.

21 A No, I'm not aware of it.

22 Q Do you have any knowledge of any contacts

1 between any member of the Department of Justice and
2 the White House regarding criminal referral C0004?

3 A Well, I'm aware that Mr. Carver at some
4 point, I think, in December had discussions with
5 David Kendall, who is counsel for the President and
6 Mrs. Clinton.

7 Q With respect to some documents that would
8 be subpoenaed or delivered --

9 A Yes, sir.

10 Q -- to the Department of Justice and the
11 FBI?

12 A Exactly, the documents that were relevant
13 to our investigation.

14 Q Did you or anyone from your office have any
15 contacts with any individual who was listed as a
16 witness or target in criminal referral C0004 about
17 the referral?

18 A My recollection is that Mr. Hale is
19 mentioned in that, and there were certainly contacts,
20 at least with his counsel, after the fraud section
21 became responsible for investigating this matter, and
22 at one point, I think Mr. Hale had contacts with case

1 agent, an FBI agent during the investigation.

2 Q That was Mr. Irons; correct?

3 A That's correct.

4 Q Now, with respect to the Hale case, did
5 Paula Casey ever tell you, or were you ever present
6 in a meeting where she said that with respect to
7 Mr. Hale's allegations with respect to President
8 Clinton, that there was nothing there? She used the
9 words "nothing there"?

10 A I don't remember having any conversations
11 with Ms. Casey.

12 Q Or a telephone conference?

13 A I don't remember any such telephone
14 conversation when she would have made such a comment.

15 Q Did you ever talk to Randy Coleman,
16 Mr. Hale's attorney?

17 A I don't believe I did.

18 Q With respect to Ms. Casey's ultimate
19 recusal from the case, do you know whether or not it
20 was related to the Hale case or the Hale case and the
21 nine criminal referrals? Was it one or both of those
22 matters?

1 A My understanding of her recusal and the
2 office's recusal was that it was prompted by, I
3 think, all of the referrals. That is, I'm not sure
4 it's possible to separate one from the other, and the
5 fact that she knew persons involved in one or more of
6 those referrals. I think that's what prompted the
7 ultimate recusal decision.

8 Q Do you have any knowledge of any improper
9 handling within the Department of Justice of any of
10 the criminal referrals relating to Madison Guaranty
11 Savings & Loan?

12 A No, sir, I do not.

13 Q Do you have any knowledge of information
14 relating to RTC criminal referrals being shared with
15 individuals other than employees of the Department of
16 Justice, the FBI or the RTC?

17 A I'm aware of concerns that some people had
18 of leaks regarding some or all of those referrals.

19 Q Leaks to whom?

20 A I think leaks to members of the press.

21 Q Was there a concern with respect to leaks
22 to targets or witnesses listed in these referrals?

1 A I'm not aware of -- certainly I've become
2 aware in recent times, through press reports and what
3 have you, of concerns about that. At the time, I
4 think I was just aware of some general concerns. I
5 think that I had received information at one point
6 that Ms. Casey was concerned about leaks by the RTC,
7 but I think that had more to do with leaks to the
8 press, speculation about the case.

9 MR. GICALE: I have nothing further at this
10 point.

11 EXAMINATION

12 BY MR. KRAVITZ:

13 Q Mr. Arterberry, what did you learn about
14 Paula Casey's concerns about the RTC leaking
15 information to the press relating to the Madison
16 case?

17 A I really remember nothing specific. It
18 seems that, and it may have been in the course of my
19 earlier House deposition, that I did have a
20 conversation. I think there were notes that I had a
21 conversation with an attorney who was in the
22 Executive Office for the United States Attorneys, and

1 I think during the conversation she had with me, she
2 mentioned Ms. Casey's concern about leaks and her
3 suspicions that they were emanating at the RTC.
4 That's -- I think that's really the only specific
5 recollection I have about concerns about leaks at the
6 time.

7 Q Have you heard anything since about
8 concerns within the Justice Department about leaks of
9 RTC information?

10 A No, I haven't. I think the published
11 reports that I referred to just a minute ago in my
12 earlier answer, I think, had more to do with leaks
13 within or information that was within the chain of
14 the RTC organization and within Treasury, and I've
15 seen press reports about that.

16 Q I want to ask you just a few follow-up
17 questions on this whole subject of the SBA documents
18 going to Neil Eggleston of the White House counsel's
19 office staff. Correct me if I'm wrong, but my
20 understanding of one of the aspects of your previous
21 testimony was when you and Mr. Carver learned
22 initially that these SBA documents had been given to

1 Mr. Eggleston, your principal concern was not so much
2 that the documents actually had gone to
3 Mr. Eggleston, but rather that you just wanted to be
4 sure that the Justice Department had access to all of
5 the relevant documents, and you were concerned that
6 possibly Mr. Eggleston had received documents that
7 the Justice Department had not yet received copies
8 of; is that accurate?

9 A I think that's a fair statement. We were
10 concerned that there might be something relevant in
11 those documents that we might not have -- it might
12 not be anywhere else, just in that set of documents,
13 so we wanted to make sure we had everything. And the
14 fact that those documents had been provided to the
15 White House, and that the allegations -- some of the
16 allegations that implicated the White House or the
17 President or Mrs. Clinton certainly made it more
18 imperative to ensure that we had everything.

19 Q Now, after Mr. Eggleston returned documents
20 to Mr. Stephens of the SBA, those documents were
21 compared with documents that were already in the
22 FBI's and Justice Department's possession; is that

1 correct?

2 A That's right, and I think I had -- prior to
3 reading Mr. Nixon's memorandum that was shown to me
4 earlier, I think I had only a vague recollection of
5 that. But reading his memorandum refreshed my
6 recollection on it.

7 Q From the comparison that was -- of those
8 two sets of documents that was conducted, did you
9 ever learn whether, in fact, Mr. Eggleston had been
10 provided SBA documents that had not previously been
11 provided to the Justice Department?

12 A I think I can answer that question by
13 saying I'm not aware that we learned of any documents
14 that were in that group of documents returned that
15 were any different from anything we had already seen.

16 Q So as far as you know, Mr. Eggleston was
17 not given any SBA documents that had not been made
18 available to the Justice Department?

19 A I'm not aware of any such documents.

20 Q Did knowing that alleviate your concern
21 about the integrity of the Justice Department's
22 investigation as a result of the SBA documents having

1 been provided to Mr. Eggleston?

2 A I think that's right, although again, I
3 want to qualify that by saying that as with any
4 investigation, we always wanted to ensure that we
5 protect the integrity of that investigation, that we
6 conduct it in a way where we can be assured that we
7 have all the relevant evidence.

8 So although we may satisfy ourselves for
9 the moment, it's a constant concern, a constant
10 responsibility to always ensure that we have
11 everything and that nothing is escaping our search.

12 Q Did the comparison of the two sets of SBA
13 documents alleviate your concern that the provision
14 of documents to Mr. Eggleston had, by itself, ever
15 interfered with the Justice Department's ability to
16 obtain all relevant information?

17 A I'm not sure that I reached any conclusion
18 like that. I think my conclusion is obviously much
19 more narrow, simply that we had taken the necessary
20 steps to ensure that we had everything. And beyond
21 that, I think I probably looked to an interview
22 process as determining whether there was anything

1 else that would cause us to take any further steps.

2 Q What do you know about the advice that
3 Mr. Stephens received from the ethics officer of the
4 SBA before providing these documents to
5 Mr. Eggleston?

6 A My only recollection is that I think what I
7 knew is what Mr. Stephens had told me.

8 Q What was that?

9 A Which was that I think the ethics officer
10 had seen no -- that there was no prohibition that
11 there was no ethical problem raised in providing
12 these documents.

13 Q Did Mr. Stephens indicate to you whether
14 the ethics officer had reviewed the documents?

15 A I don't remember that he said one way or
16 the other.

17 Q Is there anything else you can remember
18 Mr. Stephens saying to you on the subject of his
19 consultation with the ethics officer in addition to
20 what you've testified to already?

21 A No, sir, I can't add anything else to that.

22 Q To your knowledge, in the course of the

1 Justice Department's investigation of the provision
2 of documents by the SBA to Mr. Eggleston, has anyone
3 sought to interview the ethics officer at the SBA?

4 A I'm not sure whether the FBI did that in
5 the course of the investigation or not. It may
6 have. Then again, it may not. I'm not aware that it
7 was requested to the FBI.

8 Q Are you aware of any documentation of the
9 ethics officials' advice to Mr. Stephens?

10 A No, sir, I'm not.

11 Q Mr. Gicale showed you a memo dated December
12 4th -- at least the first page of a memo dated
13 December 14, 1993 from Mackay, Bostwick and Nixon to
14 you. And I don't have the memo in front of me, but
15 my notes indicate that it was Bates stamped JDA 26.
16 Do you remember the document? I think Lou is handing
17 everyone a copy.

18 MR. GICALE: Pardon me?

19 MR. KRAVITZ: I said I think Lou is handing
20 everybody a copy.

21 THE WITNESS: I do remember reviewing it
22 earlier in my deposition.

1 BY MR. KRAVITZ:

2 Q And as you'll recall, this document
3 discusses information that some unidentified source
4 reportedly provided to an FBI agent in Tampa relating
5 information coming from Mr. Hale; is that right?

6 A That's correct.

7 Q To your knowledge, has anybody, either at
8 the Justice Department or outside the Justice
9 Department, made any efforts to limit the Justice
10 Department's or the FBI's follow-up investigation of
11 information memorialized in this exhibit as having
12 come from Mr. Hale?

13 A I'm aware -- during the time that the
14 department was investigating these allegations -- I'm
15 aware of no efforts to limit this inquiry.

16 Q And no efforts to interfere with your
17 inquiry?

18 A You mean interfere with the conduct of the
19 investigation?

20 Q Correct.

21 A I'm not aware of any.

22 Q Mr. Gicale asked you a lot of questions at

1 the beginning of your deposition about the
2 conversation you had this morning with Mr. Carver
3 about certain subjects that Mr. Carver testified
4 about or reportedly testified about yesterday in his
5 deposition before the committee. Am I correct in
6 assuming that in participating in that conversation,
7 you anticipated that you, too, would be asked about
8 at least some of those subjects in your deposition
9 today?

10 A That's correct, and the conversation was
11 actually this afternoon.

12 Q Did you believe that discussing these
13 matters, the substantive matters with Mr. Carver
14 would be helpful to you as you attempted to remember
15 events from a couple of years ago and otherwise to
16 prepare yourself for the deposition?

17 A I really didn't have any purpose in mind in
18 the conversation. It was simply -- Mr. Carver had
19 just stopped by my office. And in the course of our
20 conversation, the discussion about his deposition,
21 the length of time he spent yesterday doing it, all
22 of those things just ensued.

1 Q Was it, in fact, helpful to you in
2 remembering events several years ago to see
3 Mr. Carver's chronology and to discuss certain
4 aspects of that chronology?

5 A Well, I didn't see his chronology. He
6 simply described it to me as a nine-page chronology
7 and how he had constructed it. It was helpful in one
8 way: Earlier in the deposition I was talking about a
9 period of time where Mr. Carver had said where --
10 actually, the bank fraud conference was in San Diego,
11 and that had refreshed my recollection that, in fact,
12 I had looked at a diary entry and found that I was at
13 the same conference, and that the following week I
14 had been on annual leave. And that helped explain to
15 me -- this was just a mental process that I was going
16 through this afternoon -- why so much having to do
17 with the MacDougall memorandum was history for me
18 rather than having some recollection of how it
19 unfolded at the time.

20 Q How many years have you been a federal
21 prosecutor?

22 A I've been with the Department of Justice in

1 the fraud section since 1981 beginning as a trial
2 attorney there. And before that time, going back to
3 1977, I came over to the fraud section to a special
4 task force that was being started there in the summer
5 of 1977 on detail from the Securities and Exchange
6 Commission. That task force was investigating
7 foreign payments by transnational corporations which
8 later became part of a known as the Foreign Corrupt
9 Practices Act, so I was acting as a special trial
10 attorney during that period and in 1981 became a
11 Department of Justice trial attorney.

12 Q How many years total have you either been
13 acting as or, in fact, a trial level attorney in the
14 Justice Department?

15 A Counting that detail, I guess I'm
16 completing about 18 years.

17 Q But when did you become a senior supervisor
18 and no longer a trial attorney?

19 A I became a senior litigation counsel in
20 1988 or 1989, but I continued trial responsibilities
21 until -- I think I completed my last trial in
22 mid-1990, then became the deputy chief in mid-1991

1 and have really -- that was the time I assumed the
2 supervisory responsibilities of other attorneys
3 within the fraud section.

4 Q So you have approximately 14 years
5 personally of trial level experience plus about four
6 or five additional years of supervising attorneys who
7 are handling trial level matters?

8 A That's correct.

9 Q Is it fair to say that you are intimately
10 familiar with the way in which federal prosecutors
11 prepare for trial, including the preparation of
12 witnesses to testify at trials?

13 A As familiar as that amount of time -- I
14 think people do it in different ways, but I'm
15 certainly familiar with how federal prosecutors
16 generally prepare for trial.

17 Q Are you aware of -- let me ask it this
18 way.

19 In your experience, do federal prosecutors
20 ever advise one witness -- one government witness
21 what other government witnesses have testified to or
22 are expected to testify to in an upcoming trial?

1 A I think it would depend on the
2 circumstances. Generally, I would prefer not to mix
3 one witness's recollections with another, but at
4 times, in order to clarify or in order to limit any
5 confusion or even to clear up questions that the
6 prosecutor may have about trying to reconcile
7 different answers, it may be helpful to do that.

8 Q And under those circumstances, that is not
9 a practice that is frowned upon or viewed as improper
10 by the Department of Justice?

11 A I think it could become improper,
12 regardless of who's doing it, but your question is in
13 the context of the federal prosecutor. It would be
14 improper if the purpose is to suggest answers to a
15 witness. In the course of preparing a witness, any
16 number of things, especially documents, are used to
17 refresh witnesses' recollection and try to help them
18 sharpen their memory on things.

19 Q So if the purpose in informing one witness
20 of another witness's testimony is either to refresh a
21 witness's recollection or to assist the prosecutor in
22 resolving some confusion, those would be appropriate

1 purposes, in your judgment?

2 A I think that's right. I think the caveat
3 that I continue to repeat is that there should never
4 be any attempt to try to encourage a witness to
5 conformance or to tailor testimony or in any way to
6 change that witness's recollection of what that
7 witness believes happened.

8 So that's the caveat, but there are any
9 number of ways that will try to sharpen the
10 witnesses' recollection and make them focus on events
11 that their testimony is going to concern.

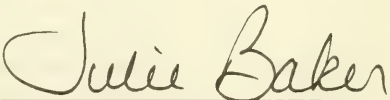
12 MR. KRAVITZ: Thank you. That's all I
13 have.

14 MR. GICALE: I have nothing further.
15 (Whereupon, at 6:28 p.m., the deposition
16 was concluded.)

17 -----
18
19 JOHN D. ARTERBERRY
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21
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

[illegible]

1 RPTS BLAZEJEWSKI

2 DCMN MAYER

3
4 COMMITTEE ON BANKING AND FINANCIAL SERVICES

5 U.S. HOUSE OF REPRESENTATIVES

6 WASHINGTON, D.C.
7
8

9 ----- x
10 In the matter of: :

11 MADISON GUARANTY :
12 SAVINGS & LOAN :

DEPOSITION OF
JOHN D. ARTERBERRY

13 ----- x
14
15 Wednesday, September 27, 1995

16
17 Washington, D.C.
18
19

20 The deposition in the above matter was held in Room 714,
21 O'Neill House Office Building, commencing at 10:10 a.m.
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6 Appearances:
7

8 Staff Present for the Banking and Financial Services
9 Committee: Thomas Clark, Senior Counsel; and Angela Garcia,
10 Minority Staff.

11 For the DEPARTMENT OF JUSTICE:

12 CHARLES SGRO, ESQ.
13 U.S. Department of Justice
14 Tenth and Constitution Avenue, N.W.
15 Washington, D.C. 20530
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1 WHEREUPON,

2 JOHN D. ARTERBERRY,

3 ~~a witness in the above-entitled matter,~~ was called as a
4 witness, and having been first duly sworn or affirmed to tell
5 the truth, the whole truth, and nothing but the truth, was
6 examined and did testify as follows:

7 EXAMINATION BY MR. CLARK:

8 Q . Good morning, Mr. Arterberry, my name is Tom Clark.

9 I am Senior Counsel to the Committee on Banking and Financial
10 Services. I appreciate your being here today.

11 Also present today is Minority Professional Staff Member,
12 Angie Garcia.

13 As you know, the committee is investigating the failure
14 and resolution of Madison Guaranty Savings & Loan Association
15 and related matters, including the executive branch's handling
16 of Madison Guaranty. Most of my questions will be related to
17 that area.

18 I will have some questions for you, and I will probably
19 show you some documents. After I am finished, Ms. Garcia may
20 have some questions for you.

21 After she is finished, Counsel for the Department of
22 Justice, Mr. Sgro, may ask questions if he wishes, and then
23 there may be some additional questions.

24 This deposition is not governed by the Federal Rules of
25 Civil Procedure, but objections may be made for the record.

1 If an objection is made, the question will either be
2 withdrawn, recast, or allowed to stand in the discretion of
3 the questioner. If there is an instruction not to answer a
4 question, and the instruction is followed, Majority staff in
5 consultation with Minority staff will determine if the
6 deposition is to proceed or if a recess must be called to
7 obtain the Chairman's instructions, if any. In a spirit of
8 cooperation, however, the committee hopes to avoid reaching
9 that point, and we have been successful so far.

10 Can you state your name for the record?

11 A Yes, John D. Arterberry.

12 Q Mr. Arterberry, what year did you graduate from law
13 school?

14 A I graduated in 1973.

15 Q Upon graduation, what did you do for employment?

16 A My first employment was with the United States
17 Securities and Exchange Commission. I began that in late
18 1973.

19 Q Was that here in Washington?

20 A Yes, here in Washington, home office.

21 Q Okay. Was that as a trial attorney?

22 A I was a trial attorney in the Enforcement Division.

23 Q Approximately how long did you remain with the SEC?

24 A I was with the SEC, and I remained in the
25 Enforcement Division the entire time until 1981. During about

1 the last three years of that period, I was on detail to the
2 Justice Department.

3 Q ~~Can you just explain what you mean by "on detail"?~~

4 A I was detailed to a special task force that had been
5 established by the Department of Justice. This is a long
6 name: the Task Force on Overseas Payments by Transnational
7 Corporations. It was established to investigate payments by
8 corporations to foreign government officials.

9 Q And I take it the purpose was to determine whether
10 there might be some illegal payments, such as bribery?

11 A That is right. At about that time, I think in late
12 1977, a new statute was enacted, the Foreign Corrupt Practices
13 Act that prohibited corrupt payment to foreign government
14 officials.

15 Q Then, at some point in 1981, you left the SEC?

16 A That is right. In early 1981, it may have been
17 January, I became employed with the Justice Department Fraud
18 Section. I have remained there since then.

19 Q Let me show you a document that has been produced by
20 the Department, and I am informed it has been culled from
21 employment records. We will mark it JDA-1. Just briefly look
22 over it.

23 My question would be, my first question would be whether
24 it is generally accurate.

25 A Yes, that is generally accurate. I think my records

1 indicated that this supervisory trial attorney position that
2 it shows from 4-89, that was a position known as Senior
3 ~~Litigation Counsel. I thought for some reason I had had~~
4 earlier -- maybe 1988; it may have been late 1988, I am not
5 sure, but this probably represents the official entry as far
6 as employment positions in the personnel records are
7 concerned. So I wouldn't take issue with it.

8 Q . Okay. So what you are saying is, in fact, you may
9 not have been reflected on the department's records; in truth,
10 you were acting as a supervisor possibly earlier than April of
11 1989?

12 A The title may have preceded the actual conversion on
13 the employment records.

14 Q Okay. And I think you mentioned the term Senior
15 Litigation Counsel?

16 A That is right.

17 Q Okay. Is there -- are there certain qualifications
18 that an attorney has to possess within the Department to
19 achieve that title?

20 A I don't think there is any specific requirement. It
21 varies, I think, probably from component -- from section to
22 section within the Criminal Division. It generally recognizes
23 just, I think, experience in trying complex litigation.

24 Q Does that necessarily include only a person's
25 experience within the Department, or to your understanding,

1 could it include experience in other positions outside of the
2 Department of Justice?

3 A ~~It is conceivable it could include, or at least in~~
4 ~~part take into account, a person's outside experience. But I~~
5 ~~think generally what we would look for if we were going to~~
6 ~~recommend someone for the position of Senior Litigation~~
7 ~~Counsel is experience in the area where we work, that is, in~~
8 ~~trying complex white-collar crime cases.~~

9 Q Okay. In your current position as Deputy Chief,
10 have you had the occasion to make recommendations
11 concerning -- designating certain persons as Senior Trial
12 Counsel?

13 A Senior Litigation Counsel? Yes.

14 Q Okay. And so your prior answer reflected your
15 experience in this area?

16 A Yes.

17 Q So from 1981 up until about 1989 your experience was
18 as an actual what I will refer to as "line attorney"?

19 A That is right, and it continued even after 4-89. As
20 Senior Litigation Counsel, I continued active litigation into,
21 I guess, mid-1990.

22 Q Okay. And that involved both trying cases in court
23 and supervising investigations; is that accurate?

24 A Yes.

25 Q Were you handling financial institution fraud

1 matters or not?

2 A I had a full range of fraud cases, including
3 ~~financial institution; I had one major financial institution~~
4 fraud case, but I think I have just about covered the range of
5 activities in the section.

6 Q Okay. Did you personally prosecute any cases
7 involving appraisals that were alleged to be intentionally
8 overstated in terms of monetary amounts?

9 A You mean in the context of a bank fraud
10 prosecution?

11 Q Yes.

12 A No, I don't think so. No, it wouldn't have been.

13 Q I didn't say this earlier, but let me say it now:
14 If my question is too convoluted, you know, just tell me you
15 don't understand it; I will rephrase it.

16 Secondly, I don't think that we will go too long, but it
17 is not a marathon if you need to take a break.

18 A Appreciate that.

19 Q Did you personally prosecute any cases involving
20 overdrafts to checking accounts?

21 A No.

22 Q The major financial institution fraud case that you
23 prosecuted, were the defendants insiders or were they
24 borrowers or did they fall into some other category?

25 A They were insiders and outside investment advisors.

1 Q Just generally speaking, can you describe if there
2 was a scheme or schemes that were involved in the case?

3 A I think, as briefly stated or briefly distilled as
4 it can be, it was a scheme in which the insiders conspired
5 with the outside investment advisors to enhance the
6 performance of the institution through an investment known as
7 "reverse repurchase transactions" that inflated the actual
8 performance, that is, the yield that was being received.
9 There was a subscheme beneath that in which the investment
10 advisors were defrauding the institution by not investing the
11 funds.

12 Q Okay. Reverse repurchase agreement?

13 A Yes.

14 Q Okay. Can you just briefly describe what that
15 concept means?

16 A I will say, yes, but these transactions vary. But
17 essentially it is an agreement to buy back at a certain price
18 a security or some other instrument. It is a device, a
19 legitimate device that is used in the investment community to
20 enhance yield; and an institution that may have a certain kind
21 of security and is locked into that security for some time may
22 want to do something else with its money, so it will engage in
23 a reverse repo. In effect, it is a sale with a buy-back
24 agreement. That is about the best I think I could do without
25 getting into excruciating detail.

1 Q This is something that is sometimes the subject of
2 criminal charges in the securities area as well, isn't it?

3 A ~~It could certainly fall into that, and I think, in~~
4 ~~fact, there were prosecutions in that area, the securities~~
5 ~~charges.~~

6 Q Okay. As a Deputy Chief in the Fraud Section, are
7 there certain subsections of the Fraud Section that you had
8 principal responsibility for?

9 A There are. My area, as this fact sheet indicates,
10 is financial institution and securities fraud, so they are two
11 separate areas.

12 Q Are there certain attorneys who are, as a matter of
13 course, assigned to each of those subsections and deal almost
14 exclusively or exclusively with crimes of those types?

15 A Well, particularly under financial institution
16 fraud; and that is a result of the funding and the programs
17 that were enacted back in 1989 with FIRREA, the Financial
18 Institutions Reform Recovery and Enforcement Act and the Crime
19 Patrol Act of 1990. It was an infusion of resources, and
20 there was a commitment by the Department that those resources
21 in the form of attorneys and investigators would be used in a
22 dedicated way, that is, they would be dedicated only to
23 investigation and prosecution of what we call FIF, financial
24 institution fraud, cases. So that group of attorneys, it is a
25 discrete unit, and that is what -- up until this point, that

1 is what we have used them for.

2 Q Okay. And approximately how many attorneys were in
3 that subsection when you first became Deputy Chief?

4 A That is going to be very difficult for me to
5 estimate, because there was a constant ebb and flow. The pool
6 of what we call the FIF attorneys that we had in the Fraud
7 Section may have reached more than 70, maybe even higher than
8 that, in number, during the peak, but a good number of those
9 were assigned to our Dallas Bank Fraud Task Force, which the
10 Fraud Section staffed and supervised, and to the New England
11 Bank Fraud Task Force, which we staffed and supervised. Those
12 were run as separate organizations, but as people would come
13 and go, or as the needs changed -- I call my unit the general
14 assignment unit, that is just an informal term, but it was
15 something of a pool, and we could shift people back and forth
16 as the needs dictated. So that is why I would say we may have
17 hovered in the range of 20, but that is just an average.

18 Q Okay. And by that, do you mean the people who were
19 based here in Washington as opposed to these people who were
20 assigned to the different task forces?

21 A That is right. The people assigned to the task
22 forces, the majority of them were commuters; that is, they
23 were based in Washington and they commuted to either Boston or
24 Dallas. But we did have residents on site at each place, and
25 in fact, still have residents in Boston.

1 Q Okay. When did you first become aware that there
2 was an investigation by the Department of the financial
3 ~~institution in Arkansas in which the names of either Bill or~~
4 Hillary Clinton had arisen?

5 A I believe that would have been sometime in the early
6 fall of 1992.

7 Q And do you recall how it was that you became aware
8 of it? .

9 A Yes. We received a couple of documents that related
10 to that investigation.

11 Q Do you recall what the documents were or the type of
12 documents?

13 A Yes, I do. One was a -- I think one was an FBI
14 airtel, what is called an airtel, the communication between
15 the field and FBI headquarters with some attachments to it.

16 The other was -- I think it was what we call an urgent
17 report, which had been -- I think it had been generated in
18 what we call either USA, the executive office or U.S.
19 attorneys, and a copy of that I think eventually came down to
20 our office.

21 Q Do you remember why the information was directed to
22 you, or was there a reason why it was directed to you?

23 A It was directed to me, I think, just in the ordinary
24 course of business because as the deputy for FIF, it was, I
25 think, the appropriate place for it to reside.

1 Q Okay. At that point, were you asked to take any
2 action?

3 A No.

4 Q Were you asked to communicate with anyone in the FBI
5 at that time concerning the documents that you had received?

6 A I was not.

7 Q Were you asked at that time to communicate with
8 anyone in the U.S. attorney's office that had generated the
9 urgent report?

10 A I was not.

11 Q Okay. After you received those documents, when was
12 the next time that you had any personal involvement in
13 connection with the same matter?

14 A This is a very rough recollection. I would say it
15 would have been sometime late that year or early the following
16 year, early in 1993.

17 Q Okay. And do you recall what that, what the nature
18 of that involvement was?

19 A Yes.

20 Q What was it?

21 A Either late in 1992, maybe sometime in December or
22 early in 1993, I became aware that Mark MacDougall, who is one
23 of the trial attorneys in the Fraud Section and in the FIF
24 area, had been asked to work on, I think, kind of an
25 assessment of one of the referrals, one of the Madison

1 Guaranty referrals.

2 Q Okay. By the way that you phrased it, it sounds as
3 if you did not ask Mr. MacDougall to undertake that task
4 yourself.

5 A That is correct.

6 Q Do you recall how you learned that information?

7 A My best recollection is that I learned it from Alan
8 Carver, who was and is the principal Deputy Chief in the Fraud
9 Section and the person to whom I reported.

10 Q At the time that you learned that this task had been
11 assigned to Mr. MacDougall, was it your understanding that he
12 had not yet done it or he had, in fact, undertaken the
13 assessment?

14 A Again, my best recollection is -- and this is, I
15 guess, more of an impression -- that it was something that was
16 under way.

17 Q Did you speak to Mr. Mark MacDougall about the task
18 yourself? And I am referring to that time period when he was
19 undertaking it.

20 A I likely would have spoken to him, but I doubt about
21 that task because it was not an assignment that I had made.
22 Again, my recollection is I had little to do with it.

23 Q Okay. Let me ask you a couple questions about
24 Mr. Mark MacDougall. At that point, how long had he been in
25 the Department, to your knowledge?

1 A I am not sure, I am not sure. I would estimate that
2 he had been there -- this would be 1993. My estimate would be
3 two years, maybe longer, but -- and I base that upon, I think,
4 the fact that we hired a lot of our FIF attorneys in 1991.

5 Q Do you recall having any particular reaction to
6 learning that Mark MacDougall had been selected to perform
7 this assessment as opposed to some other attorney in the FIF
8 section?

9 A No, other than just to think that he is a solid
10 choice because I viewed him as one of our more competent
11 people. He had done very well. I think he was assigned to
12 Dallas at the time, but I think he was well regarded.

13 Q Do you recall from your conversation with Mr. Carver
14 either being told or having an understanding or impression as
15 to whether Mr. Carver had asked Mr. MacDougall to arrive at
16 any sort of a conclusion in making his assessment?

17 A No.

18 Q After the memorandum was prepared, at about that
19 time in early 1993, did you see a copy of it?

20 A I don't think so.

21 Q Was there any point in 1993 when you were asked to
22 review the memorandum?

23 A I don't think so. I am not sure I was ever asked to
24 review it.

25 Q I do have a question about it that I think, based on

1 your experience, you might be able to answer, and so I will
2 show you a copy of it. And for the record, I am showing the
3 ~~witness two documents, a single-page cover memorandum dated~~
4 March 19, 1993, bearing Bates stamp 006676, and then a
5 five-page memorandum attached to that which bears the Bates
6 stamp number 006678 through and including 006682.

7 What I would like to direct your attention to,
8 Mr. Arterberry, is on the very last page in the section marked
9 "recommendation," and why don't you just read that to
10 yourself for a second?

11 Have you had the opportunity to do that?

12 A I have.

13 Q Okay. Mr. Mark MacDougall in here refers to current
14 Fraud Section standards for prosecution. Do you have an
15 understanding of what he was referring to in that section of
16 his memorandum?

17 A No, I don't.

18 Q To your knowledge, in 1993, were there written
19 guidelines or standards for prosecution by Department of
20 Justice Fraud Section attorneys either in the FIF unit or
21 generally speaking?

22 A Not to my knowledge.

23 Q You mentioned before that Mr. Carver was the
24 principal Deputy Chief in the Fraud Section, and that was in
25 1993?

1 A Yes.

2 Q Okay. And so he would be the person to whom you
3 would report directly at that time?

4 A That is right.

5 Q Who was the section chief for the Fraud Section at
6 that point?

7 A In 1993?

8 Q Yes.

9 A Jerry McDowell.

10 Q Okay. Did you have much direct contact with
11 Mr. McDowell at that point?

12 A I had, I guess, perhaps not daily contact, but it
13 would often be, I would say, in the context of staff meetings
14 or what have you; but generally when I was reporting on
15 something or dealing with a matter, I would go to Carver
16 first.

17 Q And approximately how long had Mr. Carver been
18 working in the Fraud Section by February of 1993?

19 A I guess my best estimate would be around five
20 years. I think he came to the section around 1988, and that
21 is just an estimate. Like most of the trial attorneys, I was
22 on the road a lot, and when personnel changes happen when we
23 were in trial, what have you, we were always playing catch-up,
24 so my dates could be off a little.

25 Q Sure. I understand that.

1 Now, in February of 1993, was there any sort of what I
2 will call a "monetary threshold" for prosecutions by the FIF
3 unit? And by that I mean a minimum amount of alleged criminal
4 proceeds or amount at issue.

5 A A threshold in determining whether --

6 Q To prosecute a case.

7 A No.

8 I might add that we did, and we still today have a
9 designation of what we call major FIF cases, and that is
10 generally -- without giving a precise definition, it is
11 matters in which there is a loss of \$100,000 or greater, where
12 there is an insider involved and there is some other
13 criteria. Generally what we prosecute are major FIF cases,
14 but there are other factors.

15 For example, if an insider is involved or if there is
16 some other overriding factor, then the case or the matter can
17 still be pursued.

18 Q In this regard, these are matters that go to the
19 exercise of prosecutorial discretion; is that correct?

20 A That is correct.

21 Q In other words, you will have a situation where it
22 appears on the facts that the government can make a prima
23 facie case, but for any of many reasons, including
24 conservation of resources, cost-benefit analysis, the
25 government might determine that the case is not worth pursuing

1 to prosecution?

2 A There could a number of different factors that would
3 be weighed in determining whether to proceed with the matter.

4 Q Okay. After this early period in 1993, when did you
5 next have any involvement in this matter directly or any
6 matter related to this particular matter?

7 A As best I recall, it must have been in the second
8 half of 1993, and it is sometime perhaps in the early autumn I
9 became aware of the possibility that there might be a recusal
10 by the U.S. attorney's office in the Madison Guaranty matter.

11 Q And do you recall how you became aware that that
12 might occur?

13 A I believe it was in a conversation or conversations
14 with Alan Carver.

15 Q When you first learned that there was a possible
16 recusal situation, were you asked to undertake any action at
17 that point?

18 A I don't think any specific action.

19 I will add a little to that just for clarity. I think
20 that the context of the conversation might have been one of
21 just, it was anticipatory, something might develop, and if
22 that is the case, it would be -- and if the matter were to be
23 handled in the Criminal Division, it most likely would fall
24 into the Fraud Section, and therefore into my unit because it
25 was a FIF matter; so just in terms of projecting what

1 personnel needs might arise, it was prudent to think about
2 what we would do.

3 Q Sure, to speak colloquially, you were being given a
4 "heads up"?

5 A That is right.

6 Q Was this, if you can recall, in the context of some
7 regular meeting to discuss the deployment of personnel or was
8 it a special conversation?

9 A I just can't remember how it came up.

10 Q Okay. Were you asked to participate in the assembly
11 of a prospective trial team?

12 A Could you repeat that? I am not sure I understood
13 that.

14 Q Sure. Were you asked by anyone to either make
15 nominations or assess candidates for any possible Fraud
16 Section trial team in the event that the matter was assumed by
17 the Fraud Section?

18 Mr. Sgro. We are still talking in that conversation,
19 right, at that point in time?

20 Mr. Clark. Yes.

21 The Witness. I think that was the thrust of the
22 conversation, if this should happen, what would we do and what
23 do you think would be a good team? And it may have just been
24 the kind of back and forth that Alan Carver and I often have
25 when we are looking about staffing, a staffing matter.

1 BY MR. CLARK:

2 Q Do you recall discussing any names with Mr. Carver
3 at that point?

4 A When you say "at that point," I can't remember
5 whether this arose in one or more conversations. It seems to
6 me it may have been a series of running conversations.

7 Q Sure.

8 A But at some point I do remember that we began to
9 focus on specific individuals.

10 Q And was it really yourself and Mr. Carver, or were
11 there other people who were involved in that discussion or
12 those discussions?

13 A At this stage, I think it was -- my best
14 recollection, it was just Alan Carver and me.

15 Q Okay. And did it take a fair amount of time, or did
16 it happen in a compressed or short period of time that you
17 went from the initial discussions to a decision in the matter?

18 A Well, when you say "to a decision," do you mean to
19 actual selection?

20 Q Yes.

21 A I don't think there was actual selection until we
22 knew that the matter was definitely coming, that there had
23 been a recusal and that it would be coming into the Fraud
24 Section. But I think at some point, let's say our thoughts
25 began to gel about who would be the likely candidate or

1 candidates.

2 Q Okay. And did you have any discussions with any of
3 the people who were under consideration to get a sense of
4 whether they would be interested or uninterested in working on
5 the matter?

6 A Prior to the time that we actually selected anyone?

7 Q Yes.

8 A I just don't remember.

9 Q At the time that you learned that, in fact, the
10 Fraud Section was going to be taking over the matter, who did
11 you learn that information from or how did you learn that
12 information?

13 A I learned that from Alan Carver.

14 Q Do you recall if this was in a face-to-face
15 conversation or if it was in some other -- through some other
16 means of communication?

17 A I believe it was a face-to-face meeting in his
18 office.

19 Q And at the time that he told you that this was the
20 case, did he ask you to undertake any actions?

21 A I think the answer to that is that we may have
22 jointly arrived at some staffing decisions.

23 Q Okay. And what were they?

24 A Well, again my impression is that these were
25 decisions that we have been moving toward from the time we

1 first discussed this. I guess the first thing was, who would
2 be the lead on this, who could do it; and we had both, I
3 think, quickly arrived at the same decision, and that was that
4 Don Mackay would be the ideal choice to head this.

5 Q And were there any other staffing decisions that you
6 had made by the time that Mr. Carver told you that the Fraud
7 Section was in fact going to take the case over?

8 A . Again, I think these were not so much decisions as
9 they were just entertaining possibilities if it should, if the
10 recusal should come our way; and I think we had considered
11 other people who would fit into that team, who would be good
12 in working this kind of matter.

13 Q Okay. And who were they?

14 A Dwight Bostwick was one, and it is difficult for me
15 to remember when it was in this period that we arrived at the
16 different ones. And Jim Nixon was another trial attorney who
17 we considered to be a good, strong choice to work with Mackay.

18 Q Okay. And did you have a personal conversation with
19 Mr. Mackay to -- well, withdrawn.

20 Did you communicate to Mr. Mackay that there was going to
21 be a recusal and that he was, in fact, going to assume
22 responsibility for the matter?

23 A I think I did, although that may have come in kind
24 of a joint meeting that we might have had. It might have been
25 Alan Carver, me -- with me and Mackay; and perhaps Dwight

1 Bostwick may have come about that way, although I might have
2 had again a preliminary heads up. It is just hard for me to
3 recall now.

4 Q In your communications with Mr. Mackay at the very
5 beginning, was there any discussion of the length of time that
6 he might be involved in this matter?

7 A I don't recall that there was any discussion in
8 terms of limiting the time. I think it was simply that this
9 was now going to be in the Fraud Section, and this was going
10 to be a principal assignment. I don't think there was any
11 discussion that this would be for just a short period of time
12 or anything like that.

13 Q At the time, was he handling other matters as well?

14 A He was.

15 Q Okay. Was there any reassignment of any of the
16 other matters that he was working on?

17 A I don't believe that it required any reassignment at
18 the time. I don't think there was anything. Just as I recall
19 now, I don't think anything was pressing, so it seemed to me
20 it was a fairly good time for him to pick up this assignment.

21 Q Okay. Was there any out-of-town travel that he had
22 that -- well, withdrawn. These other matters that he was
23 working on, did they require out-of-town travel as well?

24 A From time to time they did.

25 Q Have you ever personally met Paula Casey?

1 A I don't believe so.

2 Q Did you attend a meeting in Deputy Attorney General
3 Heymann's office at which the issue of Ms. Casey's recusal or
4 possible recusal was discussed?

5 A No, I didn't.

6 Q Okay. And by that, I was not referring to a meeting
7 specifically at which Ms. Casey was present, but any meeting.

8 A No, I don't remember attending any meeting there.

9 Q Once the matter was assumed by the Fraud Section,
10 what was your general role in relation to the entire matter?
11 By that, I am referring to the Hale prosecution and the
12 Madison investigation.

13 A Well, initially, I think my role was the same as it
14 would be for staffing up any matter that we had. It was to
15 try to assess as quickly as possible what it was we had, and
16 we knew that we had both a matter under investigation, but
17 also I think an indictment had been returned just a couple of
18 months before, a month or so before, so we knew that we had a
19 number of things we had to quickly come to grips with.

20 Q Okay. Were you to be the principal point of contact
21 for the trial team during that period?

22 A Initially, yes, yes, I was. Everything would come
23 to me from them. Now, if they couldn't reach me, they would
24 call Alan Carver directly, but initially they would work
25 through me.

1 Q Was there any requirement concerning frequency of
2 communications between yourself and the trial team during this
3 period when the matter was initially assumed by the Fraud
4 Section?

5 A At some point early on I asked that I get a report
6 from them daily -- at the end of each day, a report, that
7 is -- when they were on the road down in Little Rock, so that
8 I would know what had transpired.

9 Q As a general matter, when you were receiving these
10 reports, would you communicate them to anyone?

11 A Yes.

12 Q Who would that be generally?

13 A I would -- I think I would always communicate it to
14 Alan Carver and either copy Gerald McDowell, who was the chief
15 or perhaps -- and I think I was doing this chiefly by e-mail,
16 and I would send a message directly to both.

17 Q Okay. Was it your understanding that anyone beyond
18 Gerald McDowell was to be kept informed of events that were
19 occurring?

20 A I believe that -- I think we had an understanding
21 that if we had any significant developments, those would be
22 communicated to what we call the front office, that is, to
23 either Deputy Assistant Attorney General or to the Assistant
24 Attorney General-Criminal Division. That was really, I guess,
25 nothing different from standard procedure if there is a case,

1 it is a significant case, and there is a significant
2 development. Again, it goes back to your heads-up approach.

3 But I don't recall that my communications were going
4 beyond the two people I just identified.

5 Q Were you aware at the time that the Fraud Section
6 took responsibility for the matter that there had been some
7 communications between Mr. Hale's lawyer and the U.S.
8 attorney's office in Little Rock concerning the possibility of
9 a disposition?

10 A I learned -- I think I learned that shortly after we
11 became involved in the case.

12 Q Do you recall how you learned that information?

13 A I believe I learned it from Don Mackay.

14 Q In this initial period, did you have any
15 conversations with Mr. Mackay about the topic generally of
16 communicating with Mr. Hale's lawyer to explore the issue of a
17 possible disposition?

18 A I think we had conversations early on about that.

19 Q Okay. Can you just describe in general substance
20 the nature of your conversations or communications?

21 A This is a rough recollection, but as I best recall
22 it now, I think that we were -- as Don Mackay was becoming
23 more familiar, once he was on site he began to gather
24 information about where things stood, he became aware that
25 Hale's attorney, I think, was interested in a possible

1 disposition; and as I recall, Don Mackay and I discussed what
2 is the standard approach in the Fraud Section, that is, that
3 if we were to proceed, we would insist that there be a
4 proffer, and that proffer would have to be acceptable before
5 we would consider a disposition.

6 Q Okay. And would that be the case only in the event
7 that there was a cooperation agreement, or are you talking
8 about even in the event that Mr. Hale just wished to plead
9 guilty and take his chances with whatever sentence that the
10 judge might mete out?

11 A Again, my best recollection was that it was not in
12 the context of just having a defendant who was going to, as we
13 say, plead "straight up" to an indictment, but one who was
14 look for an agreement, a plea agreement that would involve
15 cooperation.

16 Q Okay. In any of the conversations that you had with
17 Mr. Mackay in the entire period during which the Fraud Section
18 had responsibility for the matter, did you speak with him on
19 whether reaching agreement with Mr. Hale was a -- withdrawn.

20 During the period between November of 1993 and when
21 Special Counsel assumed responsibility for the matter, did you
22 have any conversations with Mr. Mackay concerning an
23 assessment of whether Mr. Hale should be tendered a
24 cooperation agreement or not?

25 A I don't have any recollection of that precise

1 conversation.

2 Q Okay. Do you recall any conversations with
3 Mr. Mackay about proffers that had actually occurred with
4 Mr. Hale?

5 A Proffers taken by the U.S. attorney's office?

6 Q No, by Mr. Mackay or one of the other members of the
7 trial team.

8 A I don't remember any now.

9 Q Okay. Do you recall any conversations with
10 Mr. Mackay where you discussed delaying having a proffer with
11 Mr. Hale for some reason, such as the need to get a grasp of
12 the evidence in the case?

13 A I don't have any recollection of that kind of
14 conversation, no.

15 Q Do you know an FBI agent named I will say Kahoe,
16 K-A-H-O-E?

17 A I know of an agent, I also know of an Assistant
18 United States attorney named Kathy Kahoe.

19 Q Okay. Let me show you a one-page document. It
20 bears a Bates stamp, 000183. It is one page of handwritten
21 notes.

22 My first question would be whether you recognize the
23 handwriting on this sheet of paper.

24 A I do.

25 Q Whose handwriting is this?

1 A That is mine.

2 Q Okay. What I would ask you to do is just read all
3 ~~of the information that you can read on this copy~~ into the
4 record.

5 A Okay. It is a faint copy, so I will do my best.

6 At the top of the page I have, telcon with Kahoe, and the
7 date appeared to be 11-3-93. It looks like I have five items
8 here, beginning number one. It looks like number one, problem
9 number one, and beneath that it says, production of documents
10 a problem; number two, Paula Casey, and then under that topic,
11 unhappy with leaks, thinks RTC wants investigation -- I
12 believe that is wants investigation; three, that is meeting
13 with, I believe that is Heymann, Urgenson, et al., with Paula
14 Casey; four, call LAU, Ray, Carl Gamble; and five, problem
15 with referrals without docs.

16 Q Okay. Having had the opportunity to look at this,
17 can you identify the Kahoe who is at the top of the document?

18 A That would be Kathy Kahoe.

19 Q Okay. And is it fair to say that the date that
20 appears on the document is likely the date that you had the
21 telephone conversation?

22 A That is right.

23 Q Okay. And Ms. Kahoe, where was she working in
24 November of 1993?

25 A She was with the executive office of United States

1 attorneys.

2 Q Did she have a job title?

3 A I am sure she did, and I don't remember what it was.

4 Q Okay. Do you remember who initiated the
5 conversation?

6 A I believe she called me.

7 Q Item number three, the meeting, can you remember if
8 you were told this information before this meeting occurred or
9 after it had taken place?

10 A You mean, is her reference referring to something
11 that is upcoming or --

12 Q Yes.

13 A My best recollection is, this is a meeting that had
14 occurred.

15 Q Okay. And Urgenson would be Lawrence Urgenson?

16 A That is right.

17 Q And number four, where it has call LAU, would LAU be
18 a reference to Mr. Urgenson?

19 A It is, that is right.

20 Q And Carl Gamble, who is he?

21 A Carl Gamble is an attorney at the Resolution Trust
22 Corporation.

23 Q Here in Washington?

24 A Yes.

25 Q Is this note a reference to something that you are

1 supposed to do after you finish a conversation with Ms. Kahoe?

2 A I am not sure.

3 Q Do you remember what specifically about Carl Gamble
4 needed to be discussed with Mr. Urgenson or had been
5 discussed -- well, needed to be discussed, it appears.

6 A From the context here and my recollection, I believe
7 it had to do with trying to eliminate problems in the
8 production of RTC documents.

9 Q Okay. Did Ms. Kahoe tell you anything about how it
10 had come about that she called you?

11 A I don't remember anything now.

12 Q I will show you another single page of what appear
13 to be handwritten notes. This one bears Bates stamp number
14 000490. My first question again will be, can you identify the
15 handwriting that appears on this page?

16 A I can.

17 Q Okay. Whose handwriting is that?

18 A That is mine.

19 Q And this reflects what?

20 A These are notes of the meeting I had with Alan
21 Carver.

22 Q Okay. Can you just read the information that you
23 wrote down?

24 A Yes. At the top, the caption, meeting with GAC,
25 meaning Alan Carver; the date, 11-5-93. The first line, USA

1 is recusing herself and her office. Then, the next line, team
2 will go down on Tuesday. Below that, Mackay and maybe
3 Bostwick; and then below that, contingent on, and I don't have
4 that completed. Then in the left margin, clear with Deb
5 Smith.

6 Q Okay. In November of 1993 what was Ms. Smith's
7 title?

8 A In 1993, Debra Smith was the Director of the New
9 England Bank Fraud Task Force.

10 Q And so what did you have to clear with her?

11 A At this time, I believe Dwight Bostwick had recently
12 been assigned to the New England Bank Fraud Task Force, and if
13 we were going to be pulling him and putting -- teaming him
14 with Don Mackay, we needed to let Debra Smith know that. So I
15 think that is simply a note to myself to make sure she is
16 aware of that and that it would not cause any serious problems
17 for the task force.

18 Q Okay. Can I assume from the fact that no other
19 initials appear on the document that the meeting was just
20 between yourself and Mr. Carver?

21 A It is a fairly safe assumption, because usually I
22 would probably -- I think my practice usually in a meeting is
23 to include either the names or initials of other people
24 present. That is my recollection, it was just Alan along with
25 me.

1 Q Okay. I am going to show you now a pair of what
2 appear to be e-mail messages, and for the record, they bear
3 Bates stamp numbers 002250 and 002249. I have purposely said
4 the numbers in reverse order because 2250 bears a date of
5 November 5, 1993 at 2:37 p.m.; and 002249 bears the date of
6 November 5, 1993 as well, but 2:58 p.m. Why don't you just
7 take an opportunity to look at those and read them to
8 yourself.

9 Have you had a chance to do that?

10 A Yes, sir.

11 Q Now, it appears that someone received an e-mail
12 message and then sent it on to you from the fact that -- well,
13 withdrawn.

14 That you sent it on to someone else, and I say that
15 because if you look at 2249, it has from you, and it says,
16 reply forwarded; whereas 2250 says from Johnson, and it just
17 says, reply.

18 First of all, is it Doris Johnson?

19 A That is right.

20 Q All right. Who is she?

21 A Doris Johnson is a Fraud Section employee who is
22 responsible -- she is one of our Management Information
23 Specialists, and she is responsible for maintaining the
24 significant referral database.

25 Q By referral, are you referring to the form documents

1 that all of the various regulatory agencies use to report
2 potential criminal conduct to the Department?

3 A Or that one of their institutions may also -- one of
4 their regulated institutions could file.

5 Q Okay. And who made the determination that a
6 referral should be included in the database?

7 A The regulatory agencies do that.

8 Q Okay. Having had the opportunity to read the text
9 of the two e-mails, do you recall what your assignment was to
10 Ms. Johnson to look for?

11 A This does assist me in my recollection. I think
12 following my meeting with Alan Carver, I had asked Doris
13 Johnson to query our significant referral database to see if
14 there were any referrals in there relating to Madison
15 Guaranty.

16 Q Okay. And at the time, were you under the
17 impression that she should be looking for a single referral or
18 multiple referrals?

19 A I think the way I had asked her was just to see if
20 we had any referrals. I am not sure I was focusing on the
21 number.

22 Q We don't have what I will call the delivery
23 information for the e-mail that you sent, 2249. Do you know
24 whom you would have forwarded the information to?

25 A My best recollection on that is I would have -- is

1 that I forwarded it to Alan Carver. I think it is a follow-up
2 to our meeting that morning.

3 Q Did you take any further efforts to try to determine
4 whether these referrals existed or where they might be
5 located?

6 A I don't remember that I did anything beyond this.

7 Q Okay. Did you ask anyone to pursue the matter?

8 A I believe that I asked the trial team, the attorneys
9 who were being assigned to this, as one of the things that
10 they would do when they first arrived on site and began to get
11 the shape of the investigation, to find out, collect -- find
12 out what the referrals were and how many there were.

13 Q Let me show you now some more handwritten notes.
14 This is a collection of pages that appear to be consecutively
15 numbered, both in handwriting and in Bates stamps. The Bates
16 stamp numbers are 000482 through and including 000486. Once
17 again, my first question would be whether you recognize the
18 handwriting on these pages.

19 A Yes, sir, it is mine.

20 Q At the top of the first page, the very first line
21 across, can you just read that information?

22 A Yes. Telcon, or it may say telconversation with Don
23 Mackay; and then on the right side, 11-9-93.

24 Q Okay. What I would ask you to do is, at this point,
25 if you could just read the notes that you wrote on the first

1 page 0004282, and read them aloud into the record.

2 A As I do that, do you want me to translate, for
3 example, DM, Don Mackay?

4 Q Yes, that would be helpful.

5 A Okay. Don Mackay met with USA, United States
6 Attorney Casey, and Hale prosecutor, Assistant United States
7 Attorney Fletcher Jackson, and then there follow beneath that
8 a number of subpoints: total recusal, Don Mackay has case
9 file, and Hale -- Hale underlined -- United States attorney
10 talked to Carl Stern, two subparagraphs beneath that, he is
11 preparing a draft press release, will clear with JCK, John C.
12 Keeney.

13 Next item, under the next subparagraph will say, Don
14 Mackay in Little Rock to assume responsibility for matter
15 because United States attorney and many of staff know persons
16 involved. Will downplay recusal, emphasize new team in town.

17 Q Okay. Between "recusal" and "emphasize" there is
18 what appears to be some sort of mark. Is that an intentional
19 mark and does it represent something?

20 A After "recusal"?

21 Q Yes.

22 A I think that is my "and" sign.

23 Q So it would be, "Will downplay recusal and
24 emphasize"?

25 A Yes.

1 Q Okay. Can you continue, please.

2 A Next line, United States attorney pushing for
3 release, then several thoughts beneath that, because got call
4 from Hale's defense counsel, who has proposed disposition; Don
5 Mackay will -- can't decipher that, but cannot respond until
6 familiar.

7 Q Okay. So that the record is clear, there was one
8 word between quill and but that --

9 A I think it is -- will connect, but -- I am stymied
10 for the moment.

11 Q Why don't we move on.

12 A Okay, United States attorney wants to refer Coleman,
13 in parentheses, Defense Counsel to Don Mackay, but wants press
14 release first.

15 Q Let's stop right here for a second. You can look
16 through the rest of the pages if you want. My first question
17 is whether you were trying to be stenographic in your
18 note-taking or whether you made notes of matters that you
19 deemed to be particularly significant?

20 A By "stenographic," trying to be as complete as
21 possible?

22 Q Okay.

23 A I think probably more stenographic at this point.

24 Q Okay. So then this matter that is reflected on the
25 first page, 000482, is probably the first matter that was

1 discussed between yourself and Mr. Mackay?

2 A During the conversation?

3 Q Yes, the conversation on November 9th.

4 A My recollection, it is generally my practice on
5 something like this, this will be simultaneous, as the
6 conversation ensues, I am just making these notes, as opposed
7 to doing it afterwards.

8 Q Okay.

9 A And the length of it also confirms that in my mind,
10 I was just following the conversation.

11 Q Okay. And again to be clear, from looking at this,
12 can you tell whether your endeavor was to make notes of
13 everything you discussed, or were you being somewhat
14 selective.

15 I will understand if you can't recall.

16 A I can't recall now exactly what was in my mind when
17 I took the notes. My practice is to try to record, certainly
18 the salient points of the conversation; and this one, by its
19 length and detail, I think bears that out.

20 Q Okay. Now there is some discussion of a
21 conversation between Ms. Casey and Carl Stern. For the
22 record, who is Carl Stern or what position did he occupy in
23 November of 1993?

24 A Carl Stern I think at that time and still is the
25 chief spokesperson for the Department, and I think is the

1 Director of the Office of Public Affairs, I think that is his
2 title.

3 Q Okay. Had you had conversations with Don Mackay
4 prior to this telephone conversation on November 9th on the
5 issue of the press release?

6 A I am not sure. I am not sure. My recollection is
7 that during this period this subject of a press release was
8 being discussed, but I can't remember exactly when it came up.

9 Q Okay. Was it your impression that Ms. Casey wished
10 to be personally involved in the composition of the press
11 release?

12 A I don't know that I had any impression about that.

13 Q Towards the bottom of the first page you wrote "USA
14 pushing for release." Does release mean -- well, what does
15 "release" mean in that context?

16 A I think it refers to the press release.

17 Q As opposed to her being relieved of responsibility
18 for the investigation?

19 A I think that decision had been made. Again, from
20 the context, and my recollection is that she saw the press
21 release as formalizing the process of the transferring, that
22 is why she wanted that not to hold it up.

23 Q Okay. If you turn to the second page, 000483, I am
24 not going to ask you to read everything on this page, but if
25 you would go about a third of the way down, underneath there

1 is a word that appears to be "reception," underlined, and then
2 with a colon. Okay, and then the second entry underneath
3 that, okay, so skipping the one that begins with what appears
4 to be "excellent," okay, the second entry, can you read that
5 entry into the record, please?

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1 RPTS BLAZEJEWSKI

2 DCMN GALLACHER

3 A I believe that the first is my symbol for with,
4 slash Jackson, and then in quotation marks, "strange guy,"
5 close quotation mark, parentheses, looks like everyone thinks,
6 and then close parentheses.

7 Q Okay. And from looking at the page, or
8 independently, can you elaborate on those notes in any way?

9 A Yes. I just was recording Mr. Mackay's impression
10 of the assistant, Fletcher Jackson, a little editorializing
11 there.

12 Q And the reference to everyone, would that be other
13 attorneys in the U.S. Attorney's Office in Little Rock?

14 A I am not sure what he meant by that.

15 Q Okay. The entry immediately beneath that entry, can
16 you just read that aloud, please, and until what appears to be
17 a line going across the page.

18 A Indictment, beginning with the word "indictment"?

19 Q Yes.

20 A Indictment, need dictionary to read, five pages,
21 four counts, then in parentheses, 371 SBA, close parentheses,
22 then beneath that, problem, followed by a dash.

23 Q Okay. And 371 is a reference to a particular
24 statute in the U.S. Code; is that right?

25 A That is correct, the conspirator's charge.

1 Q Okay. And would this have been Mr. Mackay's words
2 to you reflected here?

3 A That is my recollection, yes.

4 Q Had you seen a copy of the indictment that he was
5 referring to prior to this conversation?

6 A I don't think so.

7 Q Okay. And this would refer to the indictment of
8 David Hale and the two other gentlemen?

9 A That is my recollection, yes, the pending
10 indictment, yes.

11 Q And the word "problem" that appears on this page,
12 does that relate to the notes immediately above it about the
13 indictment?

14 A I can't tell, and the context doesn't help me out
15 here. I just don't recall.

16 Q Okay. And I would ask you now to read allowed the
17 notes that you made underneath the line that appears
18 underneath the word "problem" down to the bottom on page
19 000483.

20 A Okay. There is something written in the left
21 margin. I can't decipher that either.

22 Q Okay. That appears to be a different, let's say,
23 darkness, it appears to be lighter than the rest of the notes
24 on that page, and it appears to be a single word. Okay. Can
25 you read the other information?

1 A Yes, U.S. attorney, USA, U.S. attorney, prepared
2 memo to DM, Don Mackay, at his request. Then there are five
3 numbered items beneath that. One, plead two years felony
4 count. Then in parentheses, CT count, and a space, close
5 parentheses. Then below that, parentheses, 15 USC 645, a
6 small "A" in parentheses, false statement to SBA. Item number
7 2, government 5(k) 1.1 motion. Three, no further changes,
8 parentheses. Four, "rec." on sentence, for recommendation,
9 and, five, Hale not -- it looks like it says not, and I can't
10 read the next word, in congressional, Congress. I think it is
11 congressional inquiry, if requested.

12 Q Okay. And these five enumerated notes, can you tell
13 what they referred to?

14 A My recollection is not really good on this, and the
15 notes aren't helping me out very much. As best I recall, I
16 think this is what the U.S. Attorney's Office had proposed in
17 terms of resolution with Hale.

18 Q Okay. And number 2, government 5(k) 1.1 motion,
19 does that indicate to you that the discussions had involved
20 any particular type of disposition?

21 A It would suggest a substantial assistance component
22 to the resolution, that is that the defendant would under the
23 sentencing guidelines, would receive credit for the assistance
24 rendered to the government.

25 Q Okay. In other words, he might testify against

1 other persons at some future proceedings.

2 A That is right, or assist in the investigation.

3 Q And then if you turn to the next page, 000484, just
4 at the top of the page there is what appears to be the number
5 6 in a circle, and then some information next to it.

6 My first question is whether that number 6 relates to the
7 five enumerated matters that appear at the bottom of the
8 previous page?

9 A I think it does.

10 Q Okay. Then can you just read aloud, please, the
11 information that appears immediately to the right of what
12 appears to be the number 6.

13 A Yes, Steve Irons, parentheses, FBI, close
14 parentheses, must be involved in all future investigations.

15 Q Okay. And did you know who Steve Irons was at the
16 time?

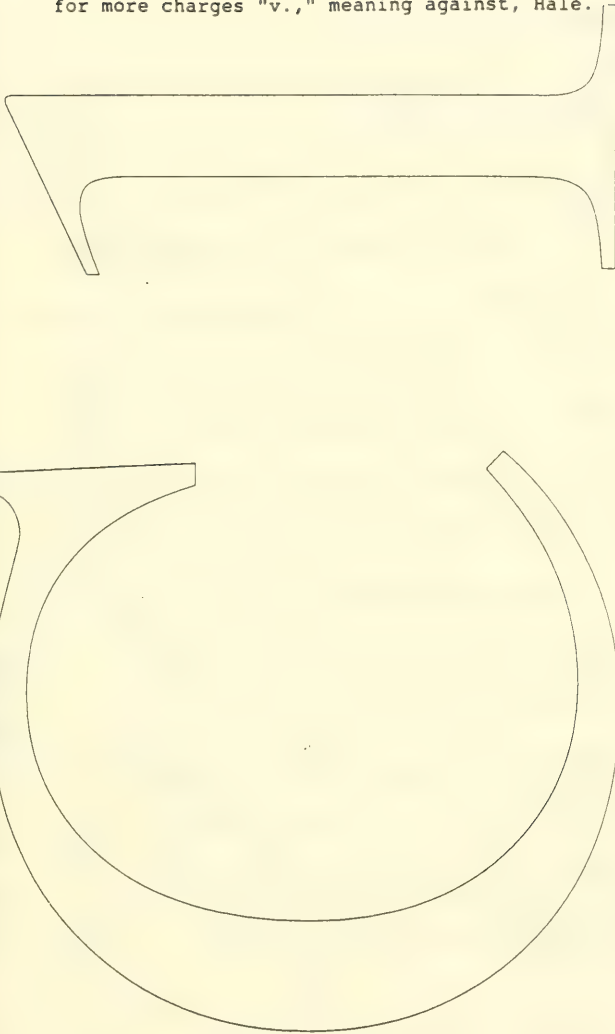
17 A I am not sure. It was at about this time that I
18 either talked to or became aware that Steve Irons was the case
19 agent on the case.

20 Q About part way, about a third to a half way down
21 that page 484 you have written what appears to be USA colon
22 AUSA Jackson, and then there is some further information with
23 that immediate note. Can you just read aloud that
24 information.

25 A U.S. attorney, then colon, AUSA Jackson has evidence

for more charges "v.," meaning against, Hale.

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1 RPTS BLAZEJEWSKI

2 DCMN MAGMER

3 Q Okay. And then underneath that entry you have
4 towards the center of the page what appears to be a line or at
5 least on this copy a line across. In your general practice,
6 do you make notations like that when you are taking notes?

7 A It is difficult to answer. I think sometimes I
8 might if I see a break, if the conversation is going a
9 different direction, but I just don't know whether I can say
10 it is a practice.

11 Q Okay. The information that appears immediately
12 underneath the line -- that did appear, at least, on the
13 copy -- can you read those next two entries aloud, please?

14 A Beginning with just to the right of the numbers?

15 Q Yes.

16 A Have not met with FBI yet. And then, below that,
17 two kind of subnotes -- one, busy with U.S. Attorney. And
18 then it looks like one of my "and" signs -- and FBI having
19 management training.

20 Q Okay. Immediately to the left of "have not," there
21 is what appears to be a symbol. Is that a symbol?

22 A It is, yes. And I think you probably see that from
23 time to time. I use that just to mark, I guess, a main
24 thought or something.

25 Q Okay.

1 A There may not be a lot of consistency in that.

2 Q And did this refer to -- well, withdraw.

3 Who had not yet met with the FBI?

4 A This is -- Don Mackay is telling me this, that he
5 has not yet met with the FBI.

6 Q Okay. Then I direct your attention to the bottom of
7 this same page 484, beginning with the word "Fletcher." Do
8 you see that?

9 A Yes, sir.

10 Q Can you just read aloud all of the information from
11 Fletcher to the bottom of page 484?

12 A Fletcher was solo on these matters. Fletcher has
13 three defendants in Hale indictment.

14 Beneath that, it looks like a couple of subthoughts: Two
15 attorneys are codefendants not much evidence against
16 attorneys. I believe the case against Hale -- it is stamped
17 over there, so I am not--

18 Q How about solid? Is that possible?

19 A That is right. It is solid. Solid case against
20 Hale; indicted all three.

21 Q Okay. What would the use of the word solid in that
22 context indicate to you?

23 A Again, this is what Don Mackay is telling me about
24 his reaction to the indictment, and I think he is simply
25 characterizing it as a good, prosecutable case against Hale.

1 I think that is his assessment.

2 Q Okay. And what was your understanding of what Don
3 Mackay was communicating by the statement Fletcher was solo on
4 these matters?

5 A What he was telling me there is that AUSA Fletcher
6 had been the sole case attorney on this matter.

7 Q Okay. Did you have an understanding that that had
8 some meaning with regard to supervisor? Did that merely refer
9 to the fact that Mr. Jackson was the only trial attorney?

10 A I think it was the latter, that he was the only one
11 on the case.

12 Q Okay. If you turn to 00485, about a third of the
13 way down, do you see what appears to be Seth Ward underlined?

14 A Yes.

15 Q In fact, is that what it says there?

16 A Yes. Seth Ward.

17 Q Can you read what appear to be the two points to the
18 right of that?

19 A The first one reads, Fletcher says is a potential
20 target; and, below that, Fletcher said Ward is father-in-law
21 of Hubbell.

22 Q Okay. Thank you.

23 The entry underneath that, and it is about four lines of
24 handwriting, can you just read that aloud, please?

25 A Yes. Lot were to be done by February 28th; not

1 likely trial date because one defense attorney has conflict.

2 Q The very bottom entry on this page 485, it
3 appears -- well, why don't you read aloud that entry?

4 A The one beginning -- it looks like tell? Tell Jerry
5 mentioned by name in PR, press release, putting DM,
6 Don Mackay, in by name also.

7 Q Who did Jerry refer to?

8 A I think he is referring to Jerry McDowell there.

9 Q Okay. Slightly above that -- I didn't mean to take
10 this out of order -- there is the name McDougal underlined,
11 and that didn't refer to Mark MacDougall, did it?

12 A No. No.

13 Q Okay. That is a reference to Jim McDougal?

14 A That is right.

15 Q Fletcher says is a manic depressive.

16 A Yes.

17 Mr. Clark. Okay. Why don't we take about two
18 minutes.

19 [Recess.]
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1 RPTS BLAZEJEWSKI

2 DCMN MAYER

3 BY MR. CLARK:

4 Q I am going to show you now, Mr. Arterberry, 002262.
5 It is a single-page e-mail that bears the date of November 9th
6 of 1993. It appears that this is an e-mail you sent after
7 your telephone conversation with Mr. Mackay; is that correct?

8 A That is correct.

9 Q You were trying to be somewhat concise and to
10 highlight things in the e-mail; is that fair to say?

11 A Yes, it is just a summary of a telephone
12 conversation.

13 Q Okay. Now, one of the points, the third from
14 bottom, it says Mackay has had initial meeting with House
15 counsel, who has proposed a pretrial disposition. That could
16 be interpreted two different ways. One would be that Hale's
17 lawyer proposed it to Mr. Mackay; the other could be that he
18 has just met the guy who has proposed it to someone else. Do
19 you recall what you were trying to say?

20 A No. No, I don't, and I am not sure that the notes
21 of this telephone conversation would help me any on that.

22 Q Okay. There is nothing in the handwritten notes
23 that indicates that Mackay personally met Hale's lawyer, is
24 there?

25 A That is right, although let me double-check it just

1 to make sure.

2 Q Oh, sure, sure. I am not trying to trip you up.

3 A No, no. The closest I can find to it I guess is on
4 page 1 where I say Don Mackay will, and I am still struggling
5 with that word, but cannot respond until familiar. I think
6 that refers to Mackay's intention to talk to Hale's counsel,
7 and I may have gotten confirmation from him about that, and I
8 typed the e-mail; that is the best I can do on that.

9 Q For the record, you were referring to page 000482?

10 A Yes, that is right.

11 Q I will show you next two pages consisting of a
12 facsimile transmission sheet, and then attachment, and these
13 bear the Bates stamp numbers of JDA 000177 and -78. Is that
14 something that you recall seeing at about the time that it was
15 apparently transmitted, November 9th of 1993?

16 A Yes, sir.

17 Q Okay. Now the transmission sheet indicates that it
18 is being sent from Mr. Mackay in Little Rock to you, and the
19 attachment is a draft press release that is on the letterhead
20 of the Department of Justice Office of Public Affairs. Do you
21 know, either from looking at this or independently, whether
22 this had been transmitted to Mr. Mackay in Little Rock prior
23 to its transmission to you here?

24 A I believe it had been transmitted from public
25 affairs to Don Mackay and, in turn, Don Mackay was sending it

1 to me.

2 Q Do you recall why you got involved in this?

3 A I think simply because, as the supervisor, I think
4 Don Mackay -- and I think this was something that was being
5 coordinated by Public Affairs with Mackay, with the United
6 States attorney's office, with the U.S. attorney herself, so
7 this was probably one of the faster ways of getting me the
8 finished product simply so I would know what is going out on
9 the matter.

10 Q Okay. And if you look at the second page,
11 JDA 000178, there are two distinct fax lines at the top of the
12 document. Did you forward this document or have it forwarded
13 to Public Affairs?

14 A I don't believe so. In fact, I was reading it just
15 the opposite way. I was reading that as the fax line when
16 Public Affairs faxed it to the U.S. attorney's office, but --

17 Q Well, I think if you look at the times --

18 A The times are off.

19 Mr. Sgro. For the record, would it have anything to do
20 with the time difference?

21 Mr. Clark. That is possibly the case.

22 The Witness. It is a one-hour time difference, but even
23 that --

24 Mr. Clark. Well, clocks can be a couple minutes off.

25 The Witness. That is true. Then there is another line

1 at the bottom.

2 Mr. Clark. Which would be an earlier time?

3 The Witness. Yes.

4 BY MR. CLARK:

5 Q Okay. So you are just not sure?

6 A I am not sure, no, sir.

7 Q Let me show you a single page of handwritten notes.

8 The Bates stamp number is JDA 000170, and do you recognize the
9 handwriting on this page of notes?

10 A Yes, sir, that is mine.

11 Q Okay. Now, this does not bear any particular date.

12 Is that accurate?

13 A That is right.

14 Q Okay. The first entry appears to be fast-paced day?

15 A Yes.

16 Q Can you just read aloud the next entry?

17 A Yes. USA, United States attorney, upset with
18 treatment received from main DOJ.

19 Q Okay. And underneath that?

20 A Three subheadings or three subparagraphs under
21 that: Carl Stern, Nathan, Keeney.

22 Q And then immediately underneath that, is that
23 related to the entry?

24 A I think so.

25 Q Okay. What does that read, please?

1 A Article should have left earlier.

2 Q Okay. Is there a --

3 A There is a word again I am stymied by.

4 Q Between article and should have?

5 A And should have, yes.

6 Q Okay. Did you report to anyone that Ms. Casey was
7 making comments about her treatment by particular persons in
8 the Department?

9 A I don't have a specific recollection, and I did, but
10 I am pretty sure in the ordinary course of reporting on the
11 day's events I would have imagined whatever Mackay told me.

12 Q Okay. Do you recall whether you were surprised that
13 Ms. Casey was making remarks of such nature to Mr. Mackay?

14 A I don't think I was surprised, no.

15 Q Did you have any understanding prior to this
16 telephone call with Mr. Mackay of any circumstances that might
17 have contributed to Ms. Casey's statements to Mr. Mackay on
18 this occasion?

19 A You are going to have to repeat that.

20 Q Okay. Prior to this conversation with Mr. Mackay,
21 were you aware of any circumstances that may have contributed
22 or been part of the circumstances that Ms. Casey was
23 complaining about?

24 A I had an impression.

25 Q Okay. What was the impression you had?

1 A That the circumstances that -- this had been this
2 subject of debate, and that the office was, I guess, less than
3 thrilled about giving up the case.

4 Q Okay. Meaning -- just define what you mean by "the
5 office."

6 A The United States attorney's office and, I think,
7 Ms. Casey were not particularly happy to be giving up this
8 case.

9 Q Okay.

10 A Giving up the prospects of the prosecution.

11 Q Okay. Did you have some understanding that she was
12 resistant to giving up the case?

13 A That was my impression.

14 Q Okay. Now underneath where we just left off it
15 appears to be, spent all day with FBI?

16 A That is correct.

17 Q Does that note help you to place this in some sort
18 of time context?

19 A That and also just the previous, the top portion of
20 this, of these notes, too, I think it must be the day
21 following the press release.

22 Q Okay. So November 10th of 1993?

23 A It seems to me roughly, yes.

24 Q Okay. Now, at the very bottom where it appears, one
25 big concern -- am I reading that accurately?

1 A That is correct.

2 Q Okay. Can you read aloud what appears on the page
3 underneath this? I recognize it is a copy.

4 A One big concern, LR, Little Rock, paper, it looks
5 like it is may -- it could be I am just misstated there --
6 made references to Congress, I think, congressional committee,
7 maybe -- I can't read that next.

8 Q The last word?

9 A Yes.

10 Q And then --

11 A Hale's lawyer orchestrating this.

12 Q Okay. Now orchestrating this, can you tell whether
13 that was your characterization or Mackay's characterization?

14 A I think that was Mackay's characterization.

15 Q Okay. And what was your understanding of what he
16 was trying to tell you in that part of the conversation?

17 A Well, he was relating to me, I think, a prosecutor's
18 typical concern about any kind of a parallel proceeding; that
19 is, that his investigation could become complicated if there
20 are congressional committees that are doing parallel
21 investigations or inquiries.

22 Q Okay. In other words, Mr. Hale's lawyer might have
23 been trying to gain a strategic advantage by speaking to
24 Congress?

25 A By offering his client or by suggesting his client

1 might be available.

2 Q Do you recall if you had any follow-up conversation
3 with Mr. Mackay about this in terms of strategy or process?

4 A I don't recall any specific conversations, but I
5 think that there was an awareness, and therefore, I think we
6 had, probably had other times when we discussed the
7 possibility that there could be complications, that is that
8 this case could see people come in, like different agencies or
9 organizations become interested in it, and we simply had to
10 focus on our job and we would have to meet those as they
11 arose.

12 Q Okay. I am going to show you next a three-page
13 document, and this document bears a Bates stamp of
14 FBI 00000948 through and including -950. What I would -- you
15 can certainly read it all. I would refer you particularly to
16 the second page. It refers to a meeting, and you are listed
17 as a person who attended the meeting.

18 A Did you want me just to focus on the --

19 Q Well, I would like you to read the page, and my
20 first question will be whether you recall the meeting to
21 discuss the circumstances that are reflected in the
22 memorandum.

23 Mr. Sgro. Could we go off the record.

24 [Discussion off the record.]

25 BY MR. CLARK:

1 Q Mr. Arterberry, having had a chance to look at the
2 memorandum, my first question is whether you recall attending
3 a meeting such as the one that is reflected in the
4 memorandum.

5 A Yes, sir, I do.

6 Q Okay. Was the issue of communications between the
7 Department of Justice and the White House -- as a general
8 matter and without being specific, was that discussed at that
9 meeting or shortly thereafter?

10 A I am not sure that I understand the question.

11 Q Okay. Was there an expression of concern at that
12 meeting about information concerning the Hale investigation or
13 the Madison Guaranty investigation being communicated to the
14 White House from the Department or from an investigatory
15 agency?

16 A I think the answer to that question is, no, but I
17 think I need to explain that my recollection is that the focus
18 was on this meeting was on the SBA documents and ensuring that
19 we had all of those documents.

20 Q Okay. Do you recall any discussion in or about
21 November of 1993 of establishing some procedures to ensure
22 that information was not communicated to the White House that
23 should not be communicated?

24 A By whom? That is what I am not clear about in this
25 line of questioning.

1 Q Okay. By the people within the Department, and by
2 that, I am including the FBI, the investigators. Was there
3 any discussion within the Department of taking any efforts to
4 ensure that information from the investigators was not being
5 communicated to the White House?

6 A I don't remember that there was anything special
7 that was communicated either to our attorneys or to the FBI
8 about that; and I say that because, as a matter of course, we
9 don't communicate about our investigations to anybody except
10 directly through -- up through the lines within the Criminal
11 Division. So there would be, I think, no reason to tell
12 either a line attorney or the FBI that they should not be
13 communicating about the investigation outside those lines.

14 I don't remember that there was any -- that that was
15 necessarily repeated to anybody. It was just standard.

16 Q Certainly in your experience there have been
17 situations where assistants have been reminded of standard
18 policies --

19 A That is right.

20 Q -- on such things as press inquiries and what can
21 and can't be said?

22 A That is right. And there may have been, out of an
23 abundance of caution, there may have been such reminders to
24 people; but I don't have -- at this point, I have no
25 recollection that we either reminded or emphasized to any of

1 our case attorneys or agents that they should not have such
2 contacts.

3 We are talking about noninvestigative -- simply
4 communicating information? That is what you are talking
5 about? You are not talking about investigative steps; you are
6 talking about simply reporting to people what is going on?

7 Q Yes. And was there -- at the time you learned of
8 the incident that was reflected in that memorandum, was that
9 the first knowledge that you had that the White House was
10 taking some proactive steps to acquire information concerning
11 this investigation?

12 A I believe that is right.

13 Q Do you recall whether there was any discussion or
14 did you participate in any discussion within the Department
15 about whether steps needed to be taken to address that
16 circumstance?

17 A When you say "that circumstance," are you referring
18 to --

19 Q That the White House was making inquiries.

20 A My recollection has to do with -- it is in the
21 context of this SBA matter, as opposed to a more general --

22 Q Okay. Without dealing with the specific facts of
23 the situation, can you tell me what discussion there was as to
24 whether any steps should be taken, reminders issued or
25 notifications made?

1 A To whom?

2 Q Either to people within the Department or to people
3 who might be on the White House staff.

4 A I don't have -- no, I don't remember that there was
5 an effort to communicate reminders or notice or what have you
6 to either of those groups.

7 Q Okay. To your knowledge, was the situation that is
8 reflected in the memorandum, was that information conveyed to
9 anyone up the chain of command inside the Department?

10 A I don't remember that it was.

11 Q Did you have any conversations with anyone in the
12 White House Counsel's office in the period between November of
13 1993 and the time that Special Counsel Fiske took over the
14 case?

15 A I did not.

16 Q And I meant specifically that related to either the
17 Hale case or the Madison investigation.

18 A No, I didn't.

19 Q Okay. To your knowledge, did anybody else in the
20 Department of Justice have any communication that related
21 specifically to the Hale prosecution or the Madison
22 investigation in that same time period?

23 A By "communication," are you discussing that from
24 investigative steps?

25 Q Yes. Yes. I don't mean a Department investigation

1 into the White House; I mean a communication to discuss ground
2 rules, let's say.

3 A Right. I am not aware of any communications.

4 Q Okay. Let me show you the first page of a multipage
5 memorandum that has been produced to us in redacted form,
6 015175. I will state that we have got -- we received just
7 yesterday a less redacted form of the document, but my
8 question does not depend on that.

9 My question, Mr. Arterberry, is that from the face of
10 this memorandum, it appears that it is addressed to both you
11 and Mr. Carver; and my question is, was that the typical
12 procedure during the period from November until Mr. Fiske
13 ~~assumed responsibility for the matter?~~

14 A I think this was typical for a time, and then -- and
15 I don't know whether the memos reflect it or not -- at some
16 point, and I think it was in December, Alan -- Alan Carver, I
17 think, essentially became the supervising deputy for the
18 investigation, and I think there may be, although I can't
19 remember now, there may be memoranda from the trial team
20 members that would simply be addressed to him, as opposed to
21 both of us.

22 Q Okay. In other words, he became their primary
23 source of contact at a certain point?

24 A That is right, and really became the supervising
25 deputy for the investigation.

1 Q Okay. I show you next one page of handwritten notes
2 000354; and is this in your handwriting?

3 A Yes, it is.

4 Q Okay. And it is a brief note. Why don't you please
5 read all of it aloud.

6 A Meeting re Little Rock recusal, LR recusal; and
7 beneath that I have with slash and then AAG -- that would be
8 Assistant Attorney General Jo Ann Harris -- GMCD is Jerry
9 McDowell, and others; and my memory is that the others
10 included, in addition to me, Alan Carver, and I think the
11 members of the trial team. I believe Donald Mackay, Jim Nixon
12 and Dwight Bostwick were there.

13 Q Okay. And can you read the text?

14 A And the date on that is 11-30-93. The text, need
15 copy of Hale indictment to AAG. I think that is probably --
16 that is more a note to me to send a copy of the Hale
17 indictment over to the Assistant Attorney General who
18 expressed an interest in having one.

19 Q I think you said first, need, but is it possibly
20 send?

21 A Oh, I am sorry, send -- send copy.

22 Q Okay. Then underneath that?

23 A Hill interest, and then beneath that, I think that
24 is Congressman LaFalce, and I believe that he headed the Small
25 Business Administration Subcommittee; and Congressman

1 Gonzalez, House Banking Committee; and then beneath that it
2 may be Senate Banking Committee, it may have been some
3 indication of interest there.

4 Q Okay. To the immediate right of LaFalce, Small
5 Business Administration or Committee, there are two words that
6 appear.

7 A Next to SBA, I think that is record review; I think
8 that is what that is.

9 Q Okay. Does that refer to the request that Senator
10 LaFalce had that is referenced in the FBI memorandum?

11 Ms. Garcia. It is Congressman LaFalce.

12 Mr. Clark. Congressman LaFalce. I will refer to page
13 0000948, if you would look at the third full paragraph.

14 The Witness. I think that is right. I think that is one
15 and the same inquiry.

16 BY MR. CLARK:

17 Q Was the sole purpose of the meeting on November 30th
18 to discuss the recusal aspect of the case?

19 A No. My recollection of the meeting was simply to
20 bring the Assistant Attorney General up to date on -- this was
21 November the 30th, so we had been -- we had not yet been in
22 this matter for a month, but because it represented a
23 significant matter within the Fraud Section, it is something
24 that we had a major commitment of people to it; and certainly
25 it was not a run-of-the-mill investigation. This was a chance

1 to bring her up to date on what had transpired so far, what we
2 had found and what our progress was.

3 Q Okay. In other words, you are saying that there may
4 have been other aspects of the case that were discussed that
5 aren't reflected on this page of paper?

6 A Yes. I think these notes were more things that I
7 recorded that I thought I had to do, or that had to -- just
8 points of interest to me. It was not a record of the meeting.

9 Q Okay. Who convened the meeting; do you recall?

10 A I think the Assistant Attorney General had asked for
11 a meeting with us.

12 Q Okay. And is there a reason why the Hill interest
13 was of interest to you?

14 A Yes. I think in line with what I said a few minutes
15 ago when we were looking at one of Don Mackay's notes, it is
16 simply a prosecutor's interest in what parallel lines of
17 inquiry, how they might affect our own investigation, whether
18 we can anticipate complications or not.

19 Q Okay. Was it a similar concern that underlay the
20 various discussions about FOIA requests that were being lodged
21 by various news organizations?

22 A I think that is a fair statement. Any time an
23 investigation is ongoing, I think that the investigative team
24 has a legitimate and overriding interest in trying to protect
25 the inquiry; and any public disclosure can prejudice not only

1 the inquiry, but can also unfairly prejudice people who have
2 no complicity in it. So I think that is fair -- a fair
3 statement.

4 Q Showing you now two additional pages of notes, Bates
5 stamped 000352 and -353, try to save a little bit of time. Is
6 it fair to say that these are your handwritten notes as well?

7 A Yes, sir.

8 Q Okay. And this reflects a telephone conversation
9 with Mr. Mackay on December 1st of 1993; is that fair?

10 A Yes, that is correct.

11 Q Now, point number two on the first page, 000352, can
12 you just read what the entry is for point number two.

13 A Two calls to Coleman, and I think that is, has not
14 returned, so I think that has reference to the defense
15 attorney.

16 Q Okay. So that would indicate that Mr. Mackay had
17 been trying to communicate with Mr. Coleman; that is how you
18 would interpret that?

19 A Correct. Yes, that is right. And he has -- his two
20 calls have not been returned.

21 Q Okay. Actually let me go back a little bit.
22 Immediately above that there are about eight lines beginning
23 with what appears to be Chief Judge. Can you just read that
24 aloud, that section, please?

25 A Beginning with item number one, met with Chief

1 Judge?

2 Q No. About halfway down the page.

3 A Chief Judge asked whether defendants would be
4 involved, Don Mackay said, yes, Chief Judge said could not
5 discuss ex parte, said could discuss only with counsel present
6 and on the record.

7 Q Okay. And does that refer to the notes that appear
8 above that on the page?

9 A It does. These are subparagraphs to that heading
10 that begins, Don Mackay asked for separate grand jury.

11 Q Okay. The third point on the first page, can you
12 just read that aloud, please?

13 A Call U.S. attorney and read USAM, United States
14 Attorney's Manual, it looks like re recusal.

15 Q Okay. Then it appears possibly the top two lines on
16 the second page, -353 might relate to that third point?

17 A Yes. Writing letter to judge, she will do letter.
18 I think that is referring to the United States attorney.

19 Q Okay. This particular point, who is to call
20 Ms. Casey?

21 A I am not sure.

22 Q Do you recall what had prompted this portion of the
23 conversation?

24 A No, I don't.

25 Q If you look on the second page, point number four?

1 A Yes.

2 Q To summarize it just briefly, it appears to be a
3 discussion about investigative resources that may be committed
4 by the Federal Bureau of Investigation.

5 A That is correct.

6 Q Was there a -- in your view at that time, a problem
7 with the amount of resources that the Bureau had committed to
8 these investigations?

9 A I think the answer is yes; and then I would qualify
10 it, whether you want to call it a problem, or simply we
11 recognized the need that we wanted to have more investigative
12 resources placed on the investigation. Now, you are often
13 going to find that prosecutors who are involved in
14 investigations never have enough resources as far as they are
15 concerned. But we thought this warranted beefing up, and that
16 is exactly what Mackay was going about doing, like a good
17 investigative prosecutor.

18 Q Sure. And did you communicate that to anyone at the
19 Bureau personally?

20 A My recollection is that Alan Carver and I talked
21 about that, and this was, as I recall, an ongoing discussion
22 that we had with our trial team members and, I think, with FBI
23 headquarters.

24 Q Okay. Let me show you a -- well, let me ask you a
25 question first. Do you recall there being a situation in

1 which a defendant contacted a representative of the government
2 during this period between November and January?

3 A Yes, I do.

4 Q Okay. What do you recall about that situation?

5 A As I remember it, I think Hale called the case
6 agent, Special Agent Irons, and wanted to discuss this
7 situation; and I think referred to, as his attorney as -- may
8 have not had his interests -- some dissatisfaction with his
9 attorney and therefore wanted to talk directly with Irons.

10 Q Okay. Let me show you one page of notes. We
11 reduced this, but the Bates stamp number on the copy that we
12 got was cut off, so I apologize. I will identify it as
13 handwritten notes which, based on prior documents, appears to
14 be in your handwriting. It says, telcon with Mackay, and it
15 bears the date of December 14, 1993.

16 And what I would like is to direct your attention to the
17 first point of discussion, beginning with SSA Irons, and it
18 appears that this entry here reflects what we were just
19 discussing.

20 A That is right.

21 Q And the first bullet, said lawyer, and it looks
22 like, D slash --

23 A Did not.

24 Q Okay. Have best interests at heart?

25 A Yes.

1 Q And your understanding of that at the time was that
2 Mr. Hale was expressing some dissatisfaction with his lawyer's
3 representation of him?

4 A That is right.

5 Q Okay. Based on this conversation and based on
6 Mr. Mackay's earlier communication that he had made a couple
7 of attempts to reach Mr. Coleman, who was not returning his
8 call, did you have some concern about the relationship between
9 Mr. Hale and his lawyer at about December 14th of 1993?

10 A I don't remember having any significant concern
11 about that. My concern was more in the direction of the fact
12 of the communication.

13 Q Okay. And that is something that should not have
14 occurred, correct?

15 A That is something we would prefer not to have occur
16 simply because of the difficulties it can cause for the
17 attorneys, for the government attorneys in the case.

18 Q Sure.

19 A And the disciplinary rules that various State bars
20 will have in place now.

21 Q An attorney is not supposed to communicate with a
22 represented party; is that correct?

23 A That is right.

24 Q At about the time of this conversation with
25 Mr. Mackay did you have any conversation with Mr. Mackay about

1 the need to communicate with Mr. Coleman to assess
2 Mr. Coleman's view of his representation of Mr. Hale?

3 A No, I don't remember that there was any, that I
4 asked Mr. Mackay or anyone else to take any special steps
5 along those lines. What I remember is, instead, again the
6 fact of the communication and our concern that we make sure
7 that the agents be reminded that --

8 Q That they shouldn't engage in those communications?

9 A Exactly. If they get those calls, they just decline
10 to take them.

11 Q Okay. Do you know whether Mr. Mackay had a
12 communication with Mr. Coleman to say, in substance, look,
13 your guy tried to call the FBI agent, and he was complaining
14 about you?

15 A I can't remember whether he did or not.

16 Mr. Sgro. Could I take two minutes here?

17 Mr. Clark. Sure.

18 [Recess.]
19
20
21
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25

1 BY MR. CLARK:

2 Q I am going to show you -- and again this doesn't
3 bear a Bates stamp number; we received this yesterday. It is
4 a photocopy of a telephone message slip.

5 Actually, I will correct myself. It does bear a Bates
6 stamp number, JDA 000019, and as I said, it is a telephone
7 message slip bearing a date of December 20th of 1993. This
8 reflects that Steve Irons, the FBI agent in Little Rock, has
9 called you, and he has returned a call from you.

10 Do you know what you were calling Mr. Irons about? I
11 realize it was a long time ago.

12 A No, I don't. It would just be speculation on my
13 part.

14 Q This is dated six days after you learned that
15 Mr. Irons had been called by David Hale. Does that bit of
16 information help to refresh your recollection as to the
17 purpose of your calling Mr. Irons on the 20th of December?

18 A No. You mean, in terms of my perhaps reminding him
19 of our policy that we not deal directly with the --

20 Q Or attempting to elicit further facts from him. Was
21 it in any way related to that incident?

22 A No. I say no because I would have left that to the
23 trial team. I think that was their role and responsibility.
24 I am just not sure why I would have called.

25 Q Were there other occasions when you called Mr. Irons

1 that you can remember?

2 A I think we had a few conversations. None stick out
3 in my mind. I don't remember the subject matter of any of
4 them, but I think they were very infrequent, again, because
5 the relationship primarily was case agent with case attorney.

6 Q Just give me one second.

7 Mr. Arterberry, in the period between November of 1993
8 and the time when Special Counsel Fiske took over the matter,
9 did you have any conversations with any member of the trial
10 team concerning whether the trial date in the Hale matter
11 should be -- whether the government should seek to delay that
12 trial date for any reason?

13 A I don't remember any conversations that focused on
14 seeking to delay the trial.

15 Q Okay. Were there any conversations that you had
16 with any members of the trial team concerning the level of
17 scrutiny that any proffer tendered by Mr. Hale should be
18 subjected to?

19 A I don't remember any discussions like that.

20 Q Okay. You were aware during that time of the
21 persons about whom Mr. Hale was making allegations?

22 A Yes.

23 Q And they would have included President Clinton and
24 Governor Tucker of Arkansas?

25 A Uh-huh.

1 Q Did you at any time have any conversation with
2 Mr. Mackay or one of the other members of the trial team
3 stating in words or substance that they should exercise more
4 caution than they might ordinarily exercise in assessing any
5 information that Mr. Hale might tender, due to the status of
6 the people about whom he might supply information?

7 A I don't remember anything along those lines; and by
8 the way you phrased the question, that they should exercise
9 caution, I think we viewed one way to move the case along --
10 Hale was the person who said he had information. We thought
11 if he had an indictment, we would give him certainly every
12 opportunity in resolving his problems by providing that
13 information, then we should follow that to the end.

14 But I don't remember any conversations impressing the
15 attorneys with using caution or anything other than just, I
16 think -- I can't even remember talking to people, to the trial
17 team about ensuring that -- as with all investigations, that
18 they guard the confidentiality of the investigation, this one
19 was more sensitive than others, but -- in all investigations
20 they are under obligation to protect 6(e) and to treat the
21 investigation as nonpublic, but I don't remember anything
22 about focusing on a proffer.

23 Q Okay. My question was just a little bit different,
24 and it was probably phrased poorly.

25 In your experience as a trial attorney, you have had

1 occasion to deal with people who sought to supply information
2 to the government in return for a consideration at the time of
3 sentencing?

4 A Yes.

5 Q In the situations you had personal dealings with,
6 did you or the investigators that worked for you or with you
7 undertake efforts to corroborate information that was being
8 supplied by persons looking to benefit themselves?

9 A We would do that as a matter of course.

10 Q Okay. My question was, was there any conversation
11 with any member of the trial team about the need to acquire
12 more substantial corroboration for information based on the
13 status of the people about whom the information was being
14 supplied or might be supplied?

15 A I don't remember such a conversation.

16 Q Okay. And did you have any personal communications
17 during the period during which you were involved with the
18 potential takeover, through the time -- takeover by the Fraud
19 Section, so from the initial conversation with Mr. Carver
20 through the period when Special Counsel Fiske took over the
21 matter with Mr. Hubbell, where he either was asking questions
22 about that or you inadvertently made some comment about the
23 investigation;?

24 A To Mr. Hubbell?

25 Q Or in his presence.

1 A No. No. I don't think I ever met Mr. Hubbell.

2 Q Okay. Thanks very much for now. That is all that I
3 have.

4 The Witness. Okay. In looking through these documents,
5 if I may --

6 Mr. Clark. If there is anything you want to clarify, go
7 right ahead.

8 The Witness. I think it would be helpful. The reference
9 in JDA 000042, the December 1, 1993 notes of the conversation
10 with Mackay, those -- number three suggests that that is
11 something for me to do, to call the United States attorney. I
12 think I stated earlier that I didn't remember ever talking to
13 her.

14 I may very well have called her about this. I don't have
15 any recollection of it, but that is certainly a strong
16 suggestion.

17 BY MR. CLARK:

18 Q Okay.

19 A You also asked me whether I had reviewed the
20 MacDougall memo. I don't remember ever having any review of
21 it, but I think I later -- and perhaps it was at the time that
22 we took over the recusal; I think a copy came into my
23 possession simply because it related to what we were working
24 on, and it might have some information in it that would be
25 helpful.

1 But I took your question to be one more review of signing
2 off or having something to do with it before it went out.

3 Q Okay. Actually, I did mean the more general, did
4 you have the opportunity to read through it?

5 A At some point, I think I did see it and read it.

6 Q If, in 1993, you did in fact read it, did you at any
7 point pass the memorandum on to any member of the trial team?

8 A I might have, but I don't remember doing that.

9 Q Okay. Was there ever a conversation that you had
10 with any member of the trial team to possibly go back and look
11 at the original referral in light of this new information that
12 was being developed from the Hale investigation?

13 A I think the answer to that question is, we were
14 looking at all the referrals once we took over the recusal,
15 and I think that those, we were not doing the Hale prosecution
16 in a vacuum. It certainly was related, and we would look at
17 the entire picture, and I was simply trying to artificially
18 separate them.

19 Q Sure. Do you have a specific recollection of a
20 specific conversation with any member of the trial team, in
21 substance, we had this earlier matter and earlier, you know,
22 we reached a certain conclusion, but maybe we should take a
23 fresh look at this?

24 A No, and I think the reason I don't recall the
25 conversation, and I think part of the reason why is that this

1 matter was never in the Fraud Section. It had not been in the
2 Fraud Section before, and I don't take MacDougall's memo as --
3 and I would not -- when I did receive it, I would not have
4 taken that as some action on a matter.

5 We didn't have a matter to take any action on, so that is
6 why I don't think I would have said, let's take another look
7 at it. As far as I was concerned, we were taking our first
8 look at it because it was the first time we had it within the
9 section.

10 Q Okay. To your knowledge, did anybody communicate to
11 anyone on the trial team that the first referral was not worth
12 reviewing, or had been found to have no merit, or anything
13 along those lines?

14 A You are saying, did anyone in the Fraud Section
15 communicate that to the trial team?

16 Q Yes. To your knowledge.

17 A Not to my knowledge.

18 Q In your view, would it have been unusual to have
19 looked at the matters referred to in the first referral at the
20 time that the matter was assumed by the Fraud Section?

21 A I think you would have to ask me that again. You
22 lost me.

23 Q Okay. Let me ask you a general question.

24 In your experience, had you had occasions where
25 information from previous investigations that had not resulted

1 in prosecutions was used in the course of a later
2 investigation to assist in the development of the later
3 investigation?

4 A That is a pretty broad question.

5 Q Is that something that you would --

6 A Yes, as a matter of fact, I have been involved in
7 cases that did benefit or did take into account information
8 that had been developed elsewhere that might not have
9 culminated in prosecution.

10 Q Okay. So it would not be beyond the pale for
11 situations to develop where some information that had resulted
12 in a dead end at one point in time later on became significant
13 or useful because of other information developed through some
14 other source?

15 A I think that is right. I think often -- and I am
16 not talking about the MacDougall memo because I don't see that
17 as a declination, since declination to me means that we have a
18 matter, and we have the call on it. But I think
19 declination -- it would not be unusual for a matter to be
20 closed, but with the recognition that if additional evidence
21 were developed, or if it happened to become available, that
22 the matter could be reopened and perhaps prosecuted
23 successfully.

24 Mr. Clark. Okay. That is it. Thanks.

25 Ms. Garcia. Can we go off the record?

1 [Recess.]

2 EXAMINATION BY MS. GARCIA:

3 Q Thank you, Mr. Arterberry, for coming before the
4 committee staff today. I appreciate your taking the time to
5 do so.

6 Earlier today you mentioned that your first recollection
7 of the Madison Guaranty issue came about as a result of an
8 urgent report coming before your desk. Do you often in the
9 general sense receive urgent reports? Do you review urgent
10 reports as common practice?

11 A I don't necessarily review them, but this was not
12 the only urgent that I had received on a FIF matter.

13 Others, that is, dealing with other subject matter, might
14 go elsewhere, but because this urgent was copied to the
15 Criminal Division, I think just in the normal course it tends
16 to filter down to the area that has subject matter
17 jurisdiction.

18 Q Okay. Thank you.

19 Later in your testimony, you discussed JDA 000183. It is
20 a telecom with Kathy Kahoe dated 11-3-93.

21 A Yes.

22 Q I would like you to review item number two. Do you
23 recall or have any personal knowledge as to where the leaks
24 regarding the Madison Guaranty case were coming from?

25 A Is your question, whether I had any information

1 myself or --

2 Q Or whether Ms. Kahoe communicated any information to
3 you regarding that issue.

4 A In my notes under that item, item two, the second
5 thing is, thinks RTC, so I think it was her that apparently --
6 Kathy Kahoe was communicating to me, I think, what the U.S.
7 attorney thought, that the leaks were emanating from RTC.

8 Q Do you have any recollection as to who in the RTC
9 was leaking information to the press or outside the agency?

10 A No, and I don't know that -- I don't remember in
11 that conversation that we got into that kind of detail.

12 Q Okay. Thank you.

13 You also discussed the Department of Justice referral
14 database, which I believe is maintained by Doris Johnson?

15 A That is right.

16 Q Did you instruct her to search the database for any
17 referrals pertaining to Madison Guaranty because the Criminal
18 Division had no possession of any such referrals?

19 A I think a fair answer to that question would be no.
20 I think I should explain.

21 The reason I asked her to check the database is that I
22 wondered whether -- and I think this was -- this resulted from
23 my meeting with Alan Carver, and again, in discussing
24 referrals, we wondered whether we had received any from the
25 RTC that had been entered into this referral database.

1 Now, we might have been prompted in part by the fact that
2 we didn't have the referrals at that moment, but I think we
3 also just thought, well, we have a significant referral
4 database in the Fraud Section; let's see if there are any in
5 there. If there had been, we would have had immediate access
6 to them.

7 Q But prior to that time, had any of the Madison
8 referrals come before your desk or before Mr. Carver's to the
9 best of your knowledge?

10 A Only in the form I think of that urgent. It seems
11 to me that the urgent report had attached to it a referral. I
12 think it was a C-0004 referral, if I am not mistaken.

13 Q So when you received the urgent report in the fall
14 of 1992, you also had the opportunity to review the 1992
15 criminal referral, which I believe is C-0004?

16 A That is right. And I think when you say "had an
17 opportunity to review," I think I did do a quick review of it,
18 but because this was simply a for-my-information document with
19 no further action, I think I did that cursory review and then
20 put it into a file.

21 Q Later -- let me retract that.

22 In 1993, when you did review Mr. MacDougall's analysis of
23 the criminal referral on Madison, did you go back to the 1992
24 referral to review it at the same time as you read
25 Mr. MacDougall's analysis?

1 A To compare the two?

2 Q Yes.

3 A No, I didn't.

4 Q Okay. Were you aware after the trial team was
5 formed that -- retract that.

6 When did you become aware that the RTC submitted nine
7 subsequent criminal referrals on Madison to the Little Rock
8 U.S. attorney's office?

9 A I believe it would have been during the first few
10 days, the first week or two in November as we -- as our team
11 arrived on site and began -- and took possession of the files
12 and began cataloging what they had. I think it was during
13 that period that -- I think that is when I got the information
14 about how many referrals. And I think there was also one
15 referral that Don Mackay had learned about on his trip to
16 Kansas City to review documents, that was still in process, so
17 when you say nine, I am not sure how many there were at that
18 point, but there were a number. I think that is when I
19 learned.

20 Q Do you recall that there were a number that have
21 been submitted to the U.S. attorney's office and also one that
22 was still in progress at the RTC at that time?

23 A That is my recollection.

24 Q Okay. So while the trial team had not reopened the
25 1992 criminal referral, they were in the process of

1 reviewing -- let me just represent to you that there were nine
2 criminal referrals after that; they were in the process of
3 reviewing those nine and were aware that there was another
4 referral in process at the RTC?

5 A That is right, but one thing I would add to that is
6 that you referred to 0004 as having been closed, I think the
7 trial team, the way we all looked at it was that all of those
8 referrals were open and were there before us to do whatever we
9 needed to do with them.

10 So I don't think any referral was considered to be either
11 closed or what have you. They were all in the file, and to
12 the extent they provided information or leads to follow, we
13 would do it.

14 Q Let me represent to you, then, that Ms. Casey
15 declined in a letter to Jean Lewis the first criminal referral
16 on Madison C-0004, so while Ms. Casey declined that prior to
17 the trial team's formation, the trial team still had that case
18 open; is that your recollection?

19 A This may get complicated because of terminology, but
20 I think the answer to your question is yes. Even after the
21 referral is declined, it is something; it does not at that
22 point, of course, lose any significance if it has information
23 in it that is useful, nor is it something that is prohibited
24 to us in terms of reopening.

25 I think in answer to Mr. -- one of Mr. Clark's questions

1 earlier, I said a declination may be on a number of different
2 grounds. But if we later -- it is, it is because we have
3 insufficient evidence, we may later gain evidence that will
4 allow us to reopen the case and prosecute.

5 I think the action taken is the same here. That did not
6 bind us from using that referral in any way we wanted to.

7 Q Am I correct that C-0004 was an open referral during
8 the trial team led by Mr. Mackay investigation of Madison in
9 the beginning of November of 1993?

10 A That is right. When you say "open," it was right
11 there with the rest of the referrals, available to do with
12 whatever we wanted to.

13 Q Okay. Thanks for clarifying that.

14 You also reviewed earlier to the document with the Bates
15 numbers FBI 00000948 through -950. You attended this meeting;
16 is that correct?

17 A The meeting of November 18, 1993?

18 Q Correct.

19 A Yes, I did.

20 Q Had the White House, to the best of your knowledge,
21 ever requested documents or information from the Department of
22 Justice, including the FBI, regarding any open investigative
23 matters with Mr. Hale or Madison Guaranty?

24 A I am not aware of any such requests.

25 Q You also reviewed today 000354. It is a meeting, it

1 is your handwritten notes of 11-30-93, and at the top I
2 believe it reads, meeting regarding Little Rock recusal?

3 A Yes.

4 Q You stated earlier that you made the notation, Hill
5 interest, which is followed by LaFalce, SBA, and Gonzalez,
6 HBC, in part. You stated that you took this notation because
7 of complications that might arise if the Hill did open an
8 investigation regarding Mr. Hale or Madison Guaranty.

9 Could you just describe to me the types of complications
10 that might arise from opening such an investigation?

11 A The complications that could arise in any kind of a
12 parallel proceeding would -- I guess the most difficult would
13 have to do with questions of immunizing witnesses, witnesses
14 who were being reluctant to testify without such protections
15 and the impact that could have on any potential cases that we
16 might be investigating. Beyond that, I think there is just
17 the practical problem of, or problems of, interference in
18 terms of everyone seeking documents from the same source or
19 trying to obtain access to witnesses, and the confusion that
20 can create with counsel for those people in wondering how to
21 respond to each one. It simply presents the prosecutors a
22 much more complicated set of circumstances to deal with in
23 trying to gain evidence, documentary evidence, and also
24 talking to witnesses.

25 Ms. Garcia. Mr. Arterberry, thank you very much. That

1 is all I have right now.

2 The Witness. Thank you.

3 Mr. Sgro. I just have a couple questions.

4 EXAMINATION BY MR. SGRO:

5 Q Earlier Mr. Clark referred your attention to
6 document 000352 through -353. I believe they are handwritten
7 notes of a 12-1-93 telephone conference with Don Mackay.

8 A Yes. I have those.

9 Q At the bottom of that document where it is numbered
10 3, could you just read it for me?

11 A Yes. Number three, call United States attorney and
12 read United States Attorney's Manual re recusal.

13 Q And that is continued on the following page, that is
14 000353. What does that say at the top of the page?

15 A I can't decipher the first word, something writing
16 letter to judge, she will do letter.

17 Q Do you remember what that is referring to?

18 A I have only the vaguest of recollections that this
19 may simply have been a notice that the United States attorney
20 wanted to give to the court on the change of responsibility
21 and the handling of the case, that is, from her office to the
22 Department of Justice headquarters component.

23 Q In which you set forth -- the provisions of dealing
24 with that are set forth in the U.S. Attorney's Manual?

25 A That is right, procedures for recusal are set out in

1 the United States Attorney's Manual.

2 Q So it is simply to let the judge and the court know
3 that the U.S. attorney's office may recuse from matters, so
4 there is no confusion with future notices or docketing?

5 A That is correct, because this was a total recusal;
6 her entire office was to be out of the matter.

7 Q You had also said, or I guess Mr. Clark had
8 questioned you concerning the communication between David Hale
9 and Agent Irons which occurred was direct communication from
10 Hale to Irons; and he had asked you whether or not you or
11 Mr. Mackay had contacted Hale concerning the relationship he
12 purportedly had with his defense counsel. If I am misstating
13 that, please feel free to clarify.

14 Mr. Clark. I am not sure if it was Hale or Hale's
15 lawyer. I know I asked the question about a communication
16 with Hale's lawyer. I am not sure about Hale.

17 BY MR. SGRO:

18 Q I am sorry, whether you communicated Hale's concerns
19 to Agent Irons that Hale may be dissatisfied with Coleman's
20 representation, and I believe you said that you don't believe
21 any such conversation took place; is that right?

22 A That is right. I had -- I don't remember having any
23 conversations with his attorney. I am not sure I had any
24 contacts with his attorney, but I don't remember any specific
25 conversations Mackay had with Coleman about that precise

1 subject.

2 Q Let me ask you, as a general rule, is it Department
3 of Justice practice to ensure that a defendant is getting
4 along well with his attorney?

5 A No, no, it would not be.

6 Q And that -- in the many cases that you have either
7 supervised or handled have there been communications, have you
8 had any communication with defense attorneys to communicate to
9 them that their clients may not be happy with their services?

10 A I can't remember that I have ever had such a
11 communication.

12 Q Thanks.

13 I believe you testified to this earlier. Mr. Clark was
14 asking you about this area, but I just want to confirm. There
15 were a number of questions dealing with Department of Justice
16 and White House communications. To your knowledge -- well, I
17 will ask you a series of questions.

18 Have you communicated -- during the period of time when
19 the Fraud Section had the Madison Guaranty matter, did you
20 communicate at all with anybody in the White House concerning
21 the progress or content of the investigation?

22 A No.

23 Q To your knowledge, did anyone on the team of
24 attorneys that -- including Mackay, Bostwick, and Nixon have
25 any direct communication with the White House concerning the

1 content of the Hale or Madison Guaranty investigation?

2 A No.

3 ~~Mr. Sgro. That is all I have. Thanks.~~

4 Mr. Clark. Okay, just a very few more.

5 ~~The Witness. Yes, sir.~~

6 BY MR. CLARK:

7 Q The JDA 000183, the single-page handwritten notes
8 dated November 3rd, there is no indication on this document
9 that Ms. Casey is in fact going to recuse herself or has been
10 recused.

11 My question is, and it is somewhat speculative, but if
12 you had been told that information, do you think you would
13 have noted it on this document?

14 A If Ms. Kahoe had told me that?

15 Q Yes.

16 A I think so.

17 Q Okay. And again I understand that is somewhat
18 speculative, but that would be a kind of significant event; is
19 that fair to say?

20 A It would have, but I don't mean to suggest to you by
21 that that that would have been the first inkling that I would
22 have received that there was a possibility of recusal.

23 Q I understand. I am just trying to place this in
24 time. Just -- again, Ms. Kahoe was, to your knowledge,
25 working in the executive office?

1 A She was.

2 Q At that time? Okay. Was Mark MacDougall still
3 employed by the Department in November of 1993 when the Fraud
4 Section assumed responsibility for this matter, if you recall?

5 A I think so. Mark is no longer with the Department;
6 he has gone back into private practice. I can't remember --
7 it seems to me it was 1994 when he left, but I just don't have
8 a clear recollection on that.

9 Q Do you recall if there was any discussion of
10 possibly including him on the trial team or not including him
11 for some particular reason such as a prior commitment?

12 A I don't remember discussing Mark one way or the
13 other at the time we were brainstorming how we would assemble
14 the team.

15 Q Lastly, just to follow up a little bit on what
16 Mr. Sgro said about the questions he was asking you about
17 Mr. Hale's communication to Mr. Irons, is it fair to say --
18 well, not fair, withdrawn.

19 Did you infer from the fact that Mr. Hale was apparently
20 reaching out to Mr. Irons that this was an indication that he
21 was still interested in pursuing cooperation with the
22 government?

23 A I think I would say yes, I thought that was a
24 possibility. I didn't know how much of one.

25 Q There is no Department of Justice policy to

1 discourage the efforts of persons accused of crimes to attempt
2 to benefit themselves by supplying information to the
3 government about possible criminal activities by other people,
4 is there?

5 A ~~No, I think it is to the contrary.~~ It is generally
6 in their interests if they have information about possible
7 crimes, evidence about possible criminality; if they provide
8 that to us, it is generally going to be to their benefit.

9 Q Is it fair to say that there are innumerable
10 successful prosecutions that have as their starting point
11 information provided by persons who are themselves the subject
12 of criminal charges or subjects of investigations?

13 A I think that is a fair statement.

14 Mr. Clark. Okay. That is it.

15 Ms. Garcia. I have a couple.

16 BY MS. GARCIA:

17 Q If Mr. MacDougall, Mark MacDougall, was not
18 considered during your consideration of a team to take on the
19 Madison investigation. Was that because he was not a
20 competent trial attorney?

21 A Oh, absolutely not, no. I think he was -- assuming
22 he was there, and I think all during his tenure, whenever it
23 ended, he was viewed as one of our more capable people --
24 diligent, very bright, and a successful prosecutor. So, no,
25 his stock had not changed.

1 Q Is it possible that he was not considered for the
2 trial team because he might have been tied up with other
3 cases, or his schedule was not permitting him to take on an
4 investigation at that time?

5 A ~~It is a possibility. I am going to be speculating;~~
6 I don't know. It could have been that.

7 I think he -- assuming he was still at the Fraud Section
8 at that point -- I think he was in Boston, and I just don't
9 remember what his case work was at the time. At this point, I
10 am unable to really attach even a month, or a year, much less
11 a month, to his departure.

12 Ms. Garcia. Okay. Thank you. I appreciate your
13 attempting to answer the question. Thank you.

14 BY MR. SGRO:

15 Q Is it fair to say that the -- strike that.

16 Is it fair to say that the overwhelming majority of
17 represented parties make their proffer, if any, through their
18 attorney rather than directly to the Department of Justice?

19 A I guess I would answer that with saying it has been
20 my experience that customarily we start off with an attorney
21 proffer as a prelude to a proffer directly from the
22 individual.

23 Q But the contact is made through the defense counsel?

24 A Absolutely.

25 Mr. Sgro. Thank you.

1 Mr. Clark. Thanks very much.

2 [Whereupon, at 1:47 p.m., the deposition was concluded.]

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1947



U. S. Department of Justice
Criminal Division

Washington, D.C. 20530

November 7, 1995

Thomas Clark, Esquire
Senior Counsel
Investigations and Oversight
Committee on Banking and
Financial Services
U.S. House of Representatives
Washington, D.C. 20515-6050

Dear Mr. Clark:

The following errata are noted in the transcript of my deposition of Wednesday, September 27, 1995:

1. P. 5, line 13: delete "payment" and replace with "payments";
2. P. 8, line 3: add "fraud" as third word on that line;
3. P. 10, line 19: delete "Patrol" and replace with "Control";
4. P. 12, line 18: delete "either USA" and replace with "EOUSA";
5. P. 13, line 22: delete "is" and replace with "was";
6. P. 18, line 12: delete "is" and replace with "was";
7. P. 20, line 25: delete "looking" and replace with "talking";
8. P. 28, line 14: delete "look" and replace with "looking";
9. P. 30, line 7: delete "appeared" and replace with "appears";
10. P. 30, line 25: delete "of" and replace with "for";
11. P. 38, line 8: delete "quill" and replace with "will";
12. P. 42, line 25: delete "conspirator" and replace with "conspiracy";
13. P. 43, line 16: delete "allowed" and replace with "aloud";

14. P. 44, line 7: delete "changes" and replace with "charges";
15. P. 49, line 25: delete "were" and replace with "work";
16. P. 51, line 14: delete "House" and replace with "Hale's";
17. P. 55, line 9: delete ", and" and replace with "that";
18. P. 55, line 11: delete "imagined" and replace with "passed on";
19. P. 59, line 18: delete "was on" at beginning of line and replace with "of";
20. P. 70, line 7: delete ", as";
21. P. 71, line 20: delete "will";
22. P. 78, line 17: add "not" between "trying" and "to"; and
23. P. 86, line 2: delete "it is, it" and replace with "if it".

In references to Mr. G. Allen Carver, Jr. throughout the transcript, his first name should be spelled "Allen", not "Alan".

Sincerely,



John D. Arterberry
Deputy Chief, Fraud Section

cc: Joe Reilly
Robert Giuffra
Lance Cole

**DEPOSITION OF JAMES M. COTTOS
IN RE: S. RES. 120**

WEDNESDAY, OCTOBER 18, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JAMES M. COTTOS, called for examination pursuant to notice of deposition, at 9:39 a.m. in Room 124 of the Dirksen Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, Esq.
Majority Associate Special Counsel
JAMES S. PORTNOY, Esq.
Minority Associate Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

LORI Y. VASSAR, Esq.
Office of Inspector General
Resolution Trust Corporation
1735 North Lynn Street
Rosslyn, Virginia 22209

ALSO PRESENT: MEGAN H. TINKER

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P R O C E E D I N G S

MR. O'CALLAGHAN: This deposition is conducted pursuant to Senate Resolution 120. The resolution establishes special committee administered by the banking committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings and Loan Association, Capital Management Services, Inc., Arkansas Development Finance Authority and other related matters.

Off the record.

(Discussion off the record.)

MR. O'CALLAGHAN: Back on the record.

Section (1)(b)(2)(e) of the resolution

authorizes investigation whether the report issued by the Office of Government Ethics on July 31, 1994 and related transcripts of deposition testimony, were improperly released to White House officials or others prior to their testimony before the Committee on Banking, Housing and Urban Affairs pursuant to Senate Resolution 229 of the 103 Congress or were used to communicate to White House officials or to others confidential RTC information relating to

Madison Guaranty Savings and Loan Association or Whitewater Development Corporation.

EXAMINATION

BY MR. O'CALLAGHAN:

Q Mr. Cottos, when were you required to testify?

A When was I notified?

Q Correct.

A October 6.

Q This deposition is being taken in advance of public hearings which will likely take place at the end of October, beginning of November. We're going to ask you a series of questions, ask you to testify under oath. If you don't understand a question, let me or Mr. Portnoy know and we will rephrase them for you. If you need a break, let me know. I'd be happy to accommodate you.

A Fair enough.

Q The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings. I would also ask that

1 you treat the substance of the deposition as
2 confidential as well.

3 Prior to the hearings you will receive a
4 letter from the committee telling you that you may
5 come to the Senate to review the transcript of your
6 deposition and make note of any corrections for
7 transcription on an errata sheet.

8 If you are called to testify at the public
9 hearing, you will be permitted to have a copy of your
10 deposition transcript four days in advance of your
11 testimony.

12 You may be represented by counsel. Are you
13 represented by counsel today?

14 THE WITNESS: Yes, I am.

15 MR. O'CALLAGHAN: Would counsel please
16 state your name for the record.

17 MS. VASSAR: My name is Lori Vassar. I
18 represent the Office of Inspector General regarding
19 any production of documents and any subsequent
20 discussions based on those documents. The Office of
21 Inspector General continues to raise any privileges
22 and exemptions that it might have with regard to

1 third parties. This is not to be considered a
2 waiver.

3 MR. O'CALLAGHAN: Thank you. Objections to
4 the form of questions will be noted for the record.
5 Counsel may object on grounds of privilege or
6 relevance. The committee chairman may rule on
7 objections where the witness refuses to answer a
8 question.

9 Would you please swear the witness.
10 Whereupon,

11 JAMES M. COTTOS
12 was called as a witness and, having first been duly
13 sworn, was examined and testified as follows:

14 EXAMINATION

15 BY MR. O'CALLAGHAN:

16 Q Would you please state and spell your full
17 name for the record.

18 A My name is James M. Cottos, C-o-t-t-o-s.

19
20

21 Q Your present business address?

22 A 1201 Constitution Avenue, Room 7320 -- I'm

1 sorry, Constitution Avenue, Northwest, Room 7320,
2 Washington, D.C. 20004.

3 Q And who is your present employer?

4 A Department of Treasury, Office of Inspector
5 General.

6 Q And what position do you currently hold?

7 A I am the assistant inspector general for
8 investigations.

9 Q Could you give me a brief overview of your
10 employment history since you graduated from college.

11 A Since I graduated from college, I worked
12 for the United States Postal Service for 2-1/2
13 years. I became a United States postal inspector in
14 June of 1976, and I worked there until July of 1979,
15 when I switched to the Department of Health and Human
16 Services, Office of Inspector General, and I worked
17 there until December of 1992, when I transferred to
18 the Department of Treasury, Office of Inspector
19 General. And I have been there ever since.

20 Q And could you describe your educational
21 experiences.

22 A I have a bachelor, BA degree in psychology,

1 from the University of New Mexico.

2 Q And what was your employment position March
3 through August of 1994?

4 A I was the assistant inspector general for
5 investigations at the Department of Treasury, Office
6 of Inspector General.

7 Q And who did you report to during that time
8 period?

9 A Robert Cesca, who was the deputy inspector
10 general and acting inspector general.

11 Q Did you have anyone that reported to you?

12 A I'm sorry?

13 Q Did you supervise anyone? Did anyone
14 during that time period report to you?

15 A Yes. The entire office of investigations
16 was my responsibility, and that consisted of
17 approximately 48 people.

18 Q What positions were contained in the office
19 of investigations, if you could give me a
20 description?

21 A Well, I had a deputy, deputy assistant
22 inspector general for investigations. I have four

1 regional inspector generals located in Washington,
2 D.C., Chicago, Houston and Los Angeles, agents in
3 each of those regions. And then I have three desk
4 officers in headquarters.

5 Q What was the name of your deputy in March
6 through August 1994?

7 A Raisa, R-a-i-s-a, Otero, O-t-e-r-o,
8 Cesario, C-e-s-a-r-i-o.

9 Q Did you have any other supervisors or
10 anyone else to report to other than Mr. Cesca?

11 A No, I did not.

12 Q Are you aware of the committee's document
13 request to the Office of Inspector General for
14 Department of Treasury?

15 A Yes, I am.

16 Q Did you search for responsive documents,
17 notes, reports, memoranda?

18 A I made all the documents available to the
19 person responsible for compiling those documents,
20 yes.

21 Q But you conducted a search?

22 A Well, we've put -- the search has been done

10

1 several times of our records, so what we have done is
2 put the records back in one area in our file room, in
3 our secure file room, and that's where all the
4 records are kept.

5 Q Have all responsive documents been
6 produced?

7 A To the best of my knowledge, yes.

8 Q Have you spoken with anyone other than your
9 counsel prior to the deposition regarding the
10 deposition?

11 A No, I have not.

12 Q Could you describe the relationship of the
13 Office of Inspector General, and with regard to the
14 rest of the agency regarding its independence, how
15 it's set up?

16 A The office itself as far as
17 responsibilities or -- I'm not sure exactly what
18 you're looking for.

19 Q I'm looking for the -- what its
20 responsibilities are with regard to the Department of
21 Treasury.

22 A Okay. The responsibilities of the Office

1 of Inspector General at Treasury are for conducting
2 investigations of GS-15s and above at the four law
3 enforcement bureaus, that's Bureau of Alcohol,
4 Tobacco and Firearms, U.S. Customs Service, U.S.
5 Secret Service and the IRS, and also conducting any
6 investigations of complaints about the internal
7 affairs or inspection offices of those law
8 enforcement bureaus, and also responsibility for any
9 fraud in any of the other bureaus within the
10 Department of Treasury.

11 There are eight other bureaus. Any fraud
12 allegations in those areas. That's the
13 responsibility of the inspector general.

14 Q During the time period March through August
15 of 1994, how much daily or weekly contact did you
16 have with Mr. Cesca?

17 A Daily.

18 Q How many times a day?

19 A It would vary. I would say anywhere from
20 one to three or four.

21 Q When did you first hear that the Office of
22 Inspector General was requested to conduct the

1 investigation into possible improper White House
2 Treasury contacts?

3 A March of 1994.

4 Q And how did you become aware of that?

5 A Mr. Cesca told me -- I believe he showed me
6 a letter that had been faxed to him from Congressman
7 Wolf requesting an investigation of the
8 Treasury-White House contacts and asking for an
9 investigation of those actions.

10 Q And what form did the request come in?

11 A I believe it was a letter from Congressman
12 Wolf directly to Bob Cesca as the inspector general.

13 Q But Mr. Cesca's request for you to conduct
14 the investigation, was this a face-to-face meeting,
15 over the phone?

16 A It was a face-to-face. I think he called
17 and -- called a meeting for myself, and at that time,
18 the assistant inspector general for audit, Jay
19 Weinstein, and we met in Mr. Cesca's office, in the
20 IG's office, to discuss this matter.

21 Q And was this the same day that he received
22 the letter from Congressman Wolf?

1 A Yes, it was.

2 Q Would that be March 4, was it?

3 A If that's the date of the letter.

4 Q Could you give me an idea of what the
5 specific discussions were at that meeting?

6 A Well, the specific discussion was how we
7 were going to approach it. I said it was very clear
8 it was an investigative matter, not an audit matter,
9 and that we could do that, we could conduct the
10 investigation by interviewing all the appropriate
11 people involved.

12 Q Did anyone suggest it was an audit matter?

13 A There was -- there has been a history in
14 Treasury Department of some other matters that had
15 been resolved. For instance, Waco had assigned one
16 auditor and one investigator. The White House
17 security had auditors and investigators assigned, so
18 there was a discussion about that, about whether
19 audits should be involved. And I said that no, that
20 I felt it was an investigative matter, and Mr. Cesca
21 agreed, Mr. Weinstein agreed.

22 Q They both agreed to that?

1 A Yes, they did.

2 Q Did you have a subsequent discussion about
3 strategies or plans for ways of running the
4 investigation, other than whether it should be an
5 audit or investigation?

6 A Not at that time. I think -- this was on a
7 Friday that we had this meeting, and basically Bob
8 asked me to think about it over the weekend and give
9 him a plan on Monday of how I intended to approach
10 the investigation. And subsequently, I believe it
11 was Saturday in the paper, Mr. Fiske came out and
12 asked that any inquiries be held off until the
13 independent counsel was through with their grand jury
14 investigation.

15 So basically I was given the assignment
16 Friday and it was taken away Saturday, so by the time
17 we talked on Monday, it was a matter of we're on hold
18 until the independent counsel allowed us to get back
19 into it.

20 Q So you were able to enjoy that Sunday.

21 (Laughter.)

22 Did the office receive any request to

1 conduct the investigation from any other source other
2 than Congressman Wolf during March of '94?

3 A I believe the Secretary had asked the
4 Office of Government Ethics to give him an opinion
5 about whether there were any problems with these
6 discussions, and I don't remember the dates, but I
7 know that the Office of Government Ethics went back
8 to the Secretary and asked that the Treasury Office
9 of Inspector General and RTC Office of Inspector
10 General do the investigation because OGE is all
11 attorneys and they do not have investigators, so I'm
12 not sure of the time frame, but it would have been
13 around that same time.

14 Q With regard to the possible OGE analysis
15 with an inspector general -- Treasury inspector
16 general's assistance, were there any discussions in
17 April or May in anticipation of doing investigation
18 for OGE?

19 A Not that I'm aware of. We were just on
20 hold. I mean, there was constant -- there may have
21 been a question at a staff meeting or at some other
22 meeting, saying do we have any idea if we're going to

1 have a go or not, but that was all until we got the
2 permission to go.

3 Q I just would like to show you some
4 documents to maybe help refresh your recollection.

5 A Okay.

6 Q I'm showing you a two-page document,
7 interoffice memorandum dated 13 May 1994, Bates
8 stamps 330 and 331. It's from Francine Kerner to
9 James Cottos, Raisa Cesario and cc to Robert Cesca,
10 and subject, discussion on Whitewater. Take a moment
11 to review that and let me know when you've had a
12 chance to read through it.

13 Excuse me. I'll give you this copy.

14 (Witness reviewed the document.)

15 A I don't specifically remember the document,
16 but I'm sure I probably received it.

17 Q Do you recall being informed about a
18 meeting between Francine Kerner, Bob Cesca, Dennis
19 Foreman and Ken Smallsbach in May of '94?

20 A Just based on this E-mail. Obviously I
21 wasn't present and I don't believe I was told
22 beforehand about the meeting.

1 Q So you don't have any independent
2 recollection of being told about the meeting?

3 A No, I don't.

4 Q Do you recall Mr. Cesca in May of '94
5 stating that he could -- his thoughts were that OIG
6 could complete an investigation within three to four
7 weeks?

8 A Yes, we had had that discussion. Bob asked
9 me how much time I thought I would need, and based on
10 the information I had, I said -- I told him I felt we
11 could do that in three to four weeks.

12 Q When did that conversation take place?

13 A Probably back in March when we first talked
14 about the request that had been received from
15 Congressman Wolf.

16 Q What was the basis of that opinion, of the
17 three- to four-week time period? What were you
18 relying on in a factual context?

19 A What we knew then was about three different
20 meetings at the White House. That's the information
21 we had, basically, and I said, you know, to be able
22 to talk to the people that attended those meetings

1 and find out what happened, I didn't think that would
2 take us months.

3 Q With regard to the contacts that were
4 finally revealed, would your assessment have been the
5 same with regard to how long it would have taken you
6 to run the investigation?

7 A I don't know if I can answer that. I
8 think, you know, you follow it, it's like any other
9 investigation. You don't really know until you get
10 involved, but I think we had decided we were going to
11 interview everyone as quickly as possible.

12 Q Do you recall the first meeting or
13 communications you had with regard to anticipating
14 conducting the investigation with regard to White
15 House Treasury contacts during that time period?

16 A I think it was at a staff meeting when it
17 was relayed that we had been given the go-ahead. I
18 guess that was in June.

19 Q Would that have been June 22?

20 A Yes.

21 Q Of 1994?

22 A Yes.

1 Q Could you tell me what the substance of the
2 staff meeting was with regard to the investigation or
3 potential investigation?

4 A Well, I think we were given the -- we were
5 told that we were finally going to have access to the
6 documents. I believe we were told by June 29 we were
7 going to get the documents and the go-ahead from the
8 independent counsel from Mr. Fiske's office.

9 Q How did you all find out that you were
10 going to have access to the documents?

11 A I think that came in a phone conversation.
12 I was told by Bob Cesca and Francine Kerner at the
13 staff meeting. I guess Bob talked about it at the
14 staff meeting. I didn't talk to anybody about that,
15 so I don't know exactly. I assumed from
16 conversation.

17 Q Did they tell you how they became aware
18 that the documents would become available to OIG?

19 A I don't recall specifically. I thought
20 that the documents were going to be turned over to
21 us, and I don't know -- I guess Treasury had them,
22 the Office of General Counsel for Treasury had them

1 at that time, but I don't know specifically.

2 Q Had you personally had any discussions with
3 anyone at the Office of General Counsel and Treasury
4 about documents?

5 A No, I had not.

6 Q Anyone at the White House?

7 A No, I had not.

8 Q Okay. So I stopped you in the middle of
9 your discussion. You can continue.

10 A At that meeting, that's when it was brought
11 up, Francine had gone to a meeting at --

12 Q When you say Francine --

13 A I'm sorry, Francine Kerner.

14 Q What's her position?

15 A She was the counsel to the inspector
16 general. She had gone to a meeting at the Office of
17 Government Ethics to meet with them to find out the
18 issues that we needed to address in our investigation
19 to resolve this matter; in other words, this was not
20 a criminal investigation. The independent counsel
21 had conducted a criminal investigation.

22 Ours was an inquiry into these contacts,

1 the ethical -- if there were any ethical violations
2 by these contacts, so we needed some direction from
3 OGE as far as issues to be addressed, what we were
4 trying -- what we needed to get into in our
5 investigation.

6 She had attended a meeting at OGE, and she
7 told us about that at this staff meeting. That's
8 where I first brought up the question about whether
9 she should be involved or not in the investigation.

10 Q And what questions did you raise?

11 A Well, I was concerned because she was not
12 an independent counsel to the IG. She was part of
13 the Office of General Counsel for the department, and
14 therefore, I raised the question, since Jean Hanson,
15 the general counsel, was one of the people involved
16 in the contacts, that if it would be appropriate for
17 her to take part in this investigation.

18 Q And who did you raise this issue with?

19 A I raised it to Bob Cesca.

20 Q What was his response?

21 A His response was that he felt she should
22 continue to be involved because we needed her legal

1 advice.

2 Q What was your reaction to that?

3 A I disagreed. I felt that especially when
4 we got into the discussion about the RTC, that we
5 were going to do this jointly with the RTC general
6 counsel, that they had attorneys, Pat Black, and also
7 since OGE consisted of all attorneys, that I didn't
8 think legal opinions would be a problem for our
9 investigation.

10 Q I'm sorry, you said OGE consisted all of
11 attorneys?

12 A OGE, Office of Government Ethics, was all
13 attorneys, and that's who we were doing this for, so
14 if we had any questions about legality, we could
15 always talk to OGE. Or on the other side, we had
16 RTC, Office of General Counsel, that we could go to
17 for legal advice if there were any questions. So I
18 felt we had adequate counsel available to us.

19 Q And what was Mr. Cesca's response to that?

20 A He said that she was going to be involved,
21 period. That was his decision.

22 Q Did he give any other specific reasons why

1 he insisted upon Ms. Kerner being involved?

2 A No, he didn't.

3 Q Have you since learned he had any other
4 reasons other than the reasons stated, that he
5 thought you needed legal counsel?

6 A No, not really. I think that's when
7 they -- I guess he and Francine talked about putting
8 something together, a document together, to
9 legitimize her involvement, which they subsequently
10 did.

11 Q Just to go back to the June 22 staff
12 meeting, who was in attendance at that meeting?

13 A Basically, and I don't know specifically,
14 but generally it was each of the assistant inspector
15 generals and the budget officer and usually each of
16 the deputies, the deputy assistant inspector
17 generals. That was the usual group at those
18 meetings.

19 Q How many people was that normally? If you
20 don't know exactly, you can give me an approximate
21 number.

22 A I would say approximately 10 to 12 people.

1 Q Other than the issue with regard to your
2 concerns about Ms. Kerner's participation in the
3 investigation, did you have any other subsequent
4 discussions regarding the impending investigation you
5 were going to --

6 A I don't know. I could look at my notes and
7 tell you.

8 Q I would like to show you what's been marked
9 a three-page document, Bates stamps, 444, 445 and
10 446. Take a moment to review it and I'll ask you
11 some questions.

12 (Witness reviewed the document.)

13 Have you had an opportunity to review 444
14 through 446?

15 A Yes, I have.

16 Q Have you ever seen this document before?

17 A I prepared that document. Those are my
18 notes, my handwritten notes.

19 Q Does anyone else's handwriting appear
20 anywhere on the document?

21 A No.

22 Q I would like to direct your attention to

1 the Bates stamp.

2 A Other than the initials in the corner, yes.

3 Q After reviewing this document, does it
4 refresh your recollection of the specific discussions
5 that occurred regarding the investigation that the
6 Office of Inspector General was going to conduct for
7 OGE?

8 A Yes.

9 Q And what other discussions took place?

10 A Well, I think the other -- the article, it
11 was discussed about what exactly the scope of our
12 investigation was going to be and the fact that we
13 were going to concentrate on the communications
14 between Treasury and the White House, and then we
15 talked about getting the names of the people that
16 were going to be involved.

17 Q With regard to limiting scopes of
18 communications between Treasury and the White House,
19 were there any other communications that were
20 initially discussed looking at?

21 A Well, I think initially, and again, this is
22 going back a little bit, but I think we were talking

1 about meetings. And when we talked about starting
2 this, at that time we were saying -- deciding that we
3 were going to cover all communications, so that would
4 be phone calls, E-mails, faxes, any kind of
5 communications, that that would be included in the
6 scope. That's what the discussion was.

7 Q I would like to direct your attention to
8 the first page of the document, and underneath,
9 there's an entry there with brackets around it. It
10 says "Nussbaum in Italy."

11 A Yes.

12 Q There are three items there. I would like
13 you to -- if you could read those for me and explain
14 to me what those refer to.

15 A The first item says "Private counsel will
16 demand to be present." I think the initial response
17 for the White House people to be interviewed was that
18 we were told that they would request that private
19 counsel be present during their interviews. The
20 second item was that the White House had reviewed the
21 Treasury papers. I don't know -- I still don't know
22 what "No copies laptop" -- I don't have a clue what I

1 was talking about when I wrote that. I really don't
2 remember.

3 Q When you said "White House reviewed
4 Treasury papers," what specifically does that refer
5 to?

6 A I think that would be the documents that
7 had been turned over to -- there was Treasury
8 documents that had been handed over to the
9 independent counsel and the house banking committee
10 was asking for documents at that time. I'm not sure
11 if the Senate committee had asked for documents at
12 that time, so I'm not sure which papers we were
13 talking about, but it was one of those document
14 requests that had been responded to.

15 Q Without respect to -- those are papers
16 related to the White House Treasury contacts?

17 A I think it was documents that had been
18 taken -- there had been a review of Treasury, not
19 conducted by us, about a request for documents
20 concerning contacts, and I believe that was based on
21 the independent counsel. Maybe it was back in March,
22 I don't know, but those are the documents that I

1 believe are being addressed there.

2 Q Okay. And was the White House asked to
3 hold off doing any kind of investigation by Mr. Fiske
4 during this time period?

5 A I don't know.

6 Q If you could review the next line for me.

7 A Next one is "Treasury reviewing White House
8 papers." The White House had also produced documents
9 to the independent counsel, and the Office of Special
10 Counsel for Treasury was reviewing those papers.
11 That's what we were told. That's what Francine told
12 us at this meeting.

13 Q Okay. Who is the Office of Special
14 Counsel?

15 A That was headed up by Jean Hanson at that
16 time.

17 Q And for what purpose were they reviewing
18 those documents?

19 A I really don't know. That was just
20 information that was passed to us at the meeting
21 because we were going to need both sets of documents
22 in order to do our investigation, so that's what I

1 was concerned about, was how quickly we were going to
2 get the documents to be able to start our review.

3 Q So this doesn't refer to OIG reviewing
4 documents in anticipation of investigation; is that
5 correct?

6 A It does not, no.

7 Q Have you since learned why the Office of
8 Special Counsel was reviewing White House papers at
9 this time?

10 A No, I didn't.

11 MR. O'CALLAGHAN: Off the record.

12 (Discussion off the record.)

13 MR. O'CALLAGHAN: Back on the record. It
14 was just brought to my attention when I was speaking
15 with Mr. Cottos I was referring to Treasury Office of
16 Special Counsel when it should have been Office of
17 General Counsel with reference to Ms. Hanson and
18 general counsel's review of White House papers.

19 BY MR. O'CALLAGHAN:

20 Q Is that correct?

21 A That's correct.

22 Q I would like to show you a document that's

1 been Bates stamped 11309 and 11310. It's somewhat
2 difficult to read the Bates, but I believe those are
3 correct. Take a moment to review that and let me
4 know when you've had a chance to look at it.

5 (Witness reviewed the document.)

6 A Okay.

7 Q Have you seen the document Bates stamped
8 11309 and 11310 before?

9 A No, I don't -- I don't believe I have.

10 Q Do you know whether it's a Treasury IG
11 document?

12 A No, I don't.

13 Q I would like to have you look at document
14 Bates stamped 11344 and 11345. Take a moment to
15 review that and let me know when you've had a chance
16 to review it.

17 (Witness reviewed the document.)

18 A I've never seen that document.

19 Q Thank you. It makes the questioning easy.

20 Actually, I would like you just to take a look at the
21 document anyway. There's a bulleted paragraph about
22 a third of the way down which begins with "Questions

1 for Francine." The second item there says "Treasury
2 attorneys need to know what Treasury witnesses know
3 in order to prepare Secretary and Treasury witnesses
4 for Congressional hearings."

5 Have you ever heard that sentiment
6 expressed during the time period March through the
7 end of June 1994?

8 A I'm not sure if it was between March and
9 June. I certainly heard it before we were -- before
10 the end of July, before the report was finished.

11 Q And where did you hear that from?

12 A From Francine, Francine Kerner, in
13 discussing access to the transcripts and what should
14 be done with the transcripts as far as prepping the
15 Secretary for his testimony.

16 Q And what were the substance of those
17 discussions?

18 A Well, the substance was that Francine felt
19 that we needed to give the transcripts to Office of
20 General Counsel for Treasury in order for them to
21 prepare testimony for the Secretary.

22 Q And what were your feelings on that?

1 A I'm an investigator. I don't believe you
2 should give deposition transcripts to anyone. That's
3 why in the course of this whole thing, I didn't
4 approve of anyone getting the transcripts other than
5 the witness themselves to get the transcripts in
6 order to see if there were any major problems in the
7 transcription, so I disagreed with anyone getting our
8 transcripts other than the witness themselves. And I
9 maintain that position throughout this whole review.

10 Q When did Ms. Kerner first express to you
11 her desire to provide Office of General Counsel with
12 transcripts?

13 A Probably after we started doing the
14 interviews. I think the first interviews were July
15 6, so sometime after that when we started talking
16 about getting them, because it was my idea the only
17 way that I felt that we could get this done in a
18 timely manner was to have a court reporter there to
19 record them and to pay to get the transcripts the
20 next day because of the number of interviews we had
21 in the short time frame, rather than having the
22 agents do the interviews and then write the

1 interviews up.

2 Q Is that your normal practice?

3 A No, it's not our normal practice. Because
4 of the time frames involved, that's what I said for
5 us to get this done, that's the only way I felt it
6 was possible.

7 Q So was that your recommendation, to have
8 transcripts provided?

9 A That's correct.

10 Q Just to get a better -- if I can get you to
11 focus in, you said around the beginning of the
12 interviews is when Ms. Kerner first brought up the
13 subject of providing transcripts to the witnesses, or
14 to Office of General Counsel, excuse me.

15 A Somewhere after the initiation of the
16 interviews, yes.

17 Q Would you say that's within a week's time
18 or a couple of days?

19 A I think shortly after we did the first
20 interviews, because we paid to get the transcripts
21 the following day. We had 24-hour service on the
22 transcripts, so when we started getting the

1 transcripts after the first interviews, somewhere
2 early on that question came up about should we give
3 them to the Secretary or not. That's when the
4 discussion first started.

5 Q Now, you just said whether you should give
6 them to the Secretary or not, and I believe earlier
7 you mentioned giving them to the Office of General
8 Counsel. Is there a distinction between that or did
9 she want to give them to both?

10 A No, it was to the Office of General Counsel
11 in order for them to use it to prepare the
12 Secretary's testimony.

13 Q And who in the Office of General Counsel
14 did she want to give them to?

15 A I believe her contact was Ken Smallsbach
16 that she was dealing with, but I don't really know.

17 Q Do you know who Mr. Smallsbach's supervisor
18 is, who he reports to?

19 A To the best of my knowledge, he reports to
20 Dennis Foreman, or did report to Dennis Foreman, who
21 was the deputy general counsel, deputy to Jean
22 Hanson.

1 Q Other than a general reluctance to hand
2 over transcripts to anyone but the witnesses for
3 purpose of verification, did you express to
4 Ms. Kerner reluctance to hand the transcripts over to
5 Office of General Counsel due to the fact that
6 members of that office were possible subjects of
7 investigation?

8 A There were several people within that
9 office that were interviewed during the course of
10 this, so that was my other concern, that we would be
11 giving documents to a department where in fact we had
12 several people to be interviewed, yes, it was a
13 concern.

14 Q Did you express that to her?

15 A Yes, I did.

16 Q And on how many occasions would you say you
17 expressed that to her?

18 A Several. I expressed it to her and I
19 expressed it to Mr. Cesca, that I was very concerned
20 about that.

21 Q Just dealing with each one individually,
22 what were Ms. Kerner's reactions to your expressing

1 of this concern?

2 A She said that she had their word that it
3 would only be used to prepare the Secretary, and that
4 was good enough for her.

5 Q Was this Ken Smallsbach's word?

6 A She said -- I didn't ask her specifically
7 who. She just said that if they gave their word,
8 being the Office of General Counsel, that it would
9 not be shared with anyone else, then that was good
10 enough.

11 Q And what was your reaction to that?

12 A I'm an investigator. I'm very suspicious.

13 Q Did she have any written agreement with the
14 Office of General Counsel that they wouldn't share
15 information with regard to transcripts that were
16 handed over?

17 A I really don't know. I mean, I --

18 Q Did you ever see one?

19 A I may have. I don't really know if there
20 was an agreement or not between the Office of General
21 Counsel and Francine Kerner.

22 Q What was Mr. Cesca's reaction to your

1 expressing concern about giving transcripts out?

2 A He sided with Ms. Kerner.

3 Q Did he state why he sided with her?

4 A No, he didn't.

5 Q What exactly did he say?

6 A He just said that if they needed them and
7 counsel worked it out, he was leaving that up to
8 them.

9 Q When did Office of General Counsel first --
10 did the Office of General Counsel ever receive
11 transcripts of the --

12 A I don't know. As I said earlier, I never
13 gave the transcripts to anyone, so when and who got
14 transcripts, I really can't tell you.

15 Q When the transcripts were prepared and
16 delivered by the transcription services, where were
17 they delivered to?

18 A They were delivered to me.

19 Q And what did you do with them after you got
20 the transcripts?

21 A We kept the original in our office, we gave
22 one copy to the investigators and we sent one copy up

1 to Francine.

2 Q So you had three copies of the transcript
3 that was delivered?

4 A That's correct.

5 Q When were the first transcripts delivered?

6 A Well, the day after the first interview, so
7 I believe the first interviews were July 6, so it
8 would have been July 7.

9 Q How soon after you received the transcripts
10 were they delivered to Ms. Kerner's office?

11 A Usually the same day or possibly the next
12 day. It depended on who we had available to run them
13 up there, because her office is located at main
14 Treasury and my office is located at the ICC
15 building.

16 Q How far apart are those offices?

17 A Four blocks, five blocks, but we were not
18 going to give them to the regular messenger service.
19 We hand-carried them, so I would have one of my staff
20 take them up there to her, so we didn't have a lot of
21 staff available. We don't have a big organization as
22 it is, and the two investigators were two of my three

1 desk officers that were assigned to this, so I was
2 really short-staffed.

3 Q After the June 22 staff meeting, what were
4 the next discussions you had with regard to the
5 upcoming investigation?

6 A Probably the next major meeting was June
7 29.

8 Q And where was that meeting?

9 A That was at main Treasury.

10 Q Who participated in that?

11 A I believe that was Francine Kerner and Bob
12 Cesca and I.

13 Q What was the purpose of the meeting?

14 A Well, that was to tell us that we had the
15 documents being released to us and we had the green
16 light to start the investigation.

17 Q Prior to June 29, had you had any
18 discussions with the people from the Resolution Trust
19 Corporation inspector general's office?

20 A I had called over and talked to Clark
21 Blight, the assistant inspector general for
22 investigations. We've known each other for probably

40

1 12 years. I coached his son in soccer way back when,
2 so we've known each other for a while.

3 So when it was discussed about playing --
4 joint investigation with RTC and OIG, I called Clark
5 and I told Bob Cesca I didn't think it would be a
6 problem, the joint investigation, because Clark and I
7 did know each other.

8 So I had called Clark, and we spoke in
9 general terms about how we were going to do this and
10 who we were going to assign to it.

11 Q When did that occur?

12 A Probably somewhere between the 22nd and the
13 29th. I didn't -- I don't have a record of it, so it
14 was somewhere in there.

15 Q But you recall it was between the two staff
16 meetings?

17 A That's correct.

18 Q I would like to have you look at a document
19 which bears Bates stamps, it's hard to read on the
20 first page, 336 and then it's cut off a little bit.
21 Second page is 337. It's a two-page document,
22 appears to be a copy of an interoffice memorandum,

1 which I believe, it looks like an E-mail to me. Is
2 that an E-mail?

3 A That's an E-mail off of our fax, and often
4 they start in the middle. That's not anything
5 devious. That's the way our system works. It's a
6 little better now but still not quite there. That's
7 the reason that it starts in the middle of the page.

8 Q The date on it is 23 June 1994 from
9 Francine Kerner to James Cottos, cc Robert Cesca and
10 Raisa Cesario, subject, meeting with Ken Smallsbach
11 and Bob McNamara. Take a moment to review it and let
12 me know when you've had a chance to go through its
13 contents.

14 (Witness reviewed the document.)

15 A Okay.

16 Q First question, have you seen this document
17 before?

18 A Yes, I have.

19 Q When did you see it?

20 A June 23, when I received it from -- well,
21 I'll take that back. June 24. Francine put it on at
22 10:40 p.m. I'm sure I didn't see it that night, I

1 saw it the next day.

2 Q Under the subject, meeting with Ken
3 Smallsbach and Bob McNamara, "Ken and Bob came up to
4 see me around 6:45. They had the following
5 questions. The first one is when could they talk to
6 agency employees to prepare them for the
7 Congressional hearings.

8 "After we interviewed them of course, but
9 how soon after."

10 Do you recall --

11 A We talked about that.

12 Q That discussion?

13 A Yes.

14 Q What are the discussions you had about
15 that?

16 A The discussion was between Bob Cesca and
17 Francine and I about that access, and again, I was
18 concerned that they not talk to anyone until we were
19 done with all of the interviews, and that's what I
20 expressed.

21 Q And how was that received?

22 A Mixed. I think Francine voiced the concern

1 that the staff needed to be prepared for the
2 testimony and that we needed to give them more time,
3 and I told them that we would get those -- the
4 interviews done as quickly as possible, at least
5 after the Treasury people were done, then maybe they
6 could start talking, but again, I felt that the
7 transcripts should not be shared until the whole
8 thing was done.

9 Q And what were the specific concerns with
10 sharing the transcripts before the whole thing was
11 done?

12 A Because of one witness seeing what another
13 witness had said. That's a common concern.

14 Q What's the specific concern centered on?

15 A Well, I think just in the past, that I want
16 to interview someone and I want to know what they
17 recall about it, not what someone else recalls about
18 it. If they read someone else's transcript, they may
19 slant their testimony based on that.

20 Q It might infect their recollection with
21 someone else's recollection?

22 A That's correct.

1 Q Were any agency employees prepared for
2 Congressional hearings by Smallsbach or Cesca before
3 you conducted your interviews?

4 A I don't know.

5 Q And you said the reaction was mixed. Could
6 you give me what everyone's viewpoint on that was?

7 A Well, I think Bob Cesca was somewhat
8 neutral. By that I meant he -- most of the
9 discussion was between Francine and I about the pros
10 and cons of making the documents -- making the
11 transcripts available. And, you know, as far as I
12 was concerned, they could talk to them about their
13 testimony, but I didn't feel that they should need
14 the transcripts, that they should have access to the
15 transcripts.

16 Q So you had no problem with them being
17 prepared orally with department officials but you
18 didn't want the transcripts to be used; is that
19 correct?

20 A That's correct.

21 Q Did Ken Smallsbach participate in any
22 discussions with regard to the transcripts provision

1 to witnesses?

2 A Not with me.

3 Q Why would Ken and Bob go up to see Francine
4 Kerner with regard to preparing witnesses and talking
5 to --

6 A I think they were the two attorneys that
7 were responsible for preparing testimony for the
8 Secretary.

9 Q And just for frame of reference, we've been
10 talking about preparing people for testimony. What
11 testimony were they preparing prepared for?

12 A For his testimony before the house banking
13 committee and the Senate banking committee. I think
14 he had been called to both or at least put on notice
15 that he would be testifying before both committees.

16 Q And were any other Treasury officials being
17 prepared for Congressional testimony during this time
18 period?

19 A There were several that were being prepared
20 for testimony that had been told they would be called
21 to testify.

22 Q And which officials were those?

1 A Well, at least Jean Hanson, the general
2 counsel, Roger Altman, the Deputy Secretary. Those
3 were probably the two main people.

4 Q Was Dennis Foreman a possible subject of
5 your investigation?

6 A Yes, he was. I don't want to say subject.
7 I think that's a little strong. I think --

8 Q Characterize it as accurately as possible.

9 A As a witness or involved in the context,
10 yes. The only other discussion in this document was
11 the access to White House people, and I don't know if
12 that's relevant or not. There was a --

13 Q What were those discussions?

14 A There was a long discussion about initially
15 Ms. Kerner said that she felt -- when we had agreed
16 that we would take -- put everyone under oath and
17 have a court reporter there to do the interviews of
18 the Treasury and RTC people, the next question was
19 about the White House people. And I felt that
20 however we did the Treasury and RTC people, we needed
21 to do the White House people the same way.

22 Francine Kerner said that that wasn't

1 necessarily true because the Treasury people are
2 compelled to cooperate with the Treasury Office of
3 Inspector General, RTC people are compelled to
4 cooperate with the RTC Office of Inspector General,
5 but the White House people were not compelled to
6 cooperate with either of us.

7 So she said that we should have different
8 rules for them, and I disagreed, and I said that we
9 would look not independent and not straightforward if
10 we had separate rules for the White House people than
11 we did for the Treasury and RTC people. And
12 initially I think in her contacts with Jane Sherburne
13 of the White House staff, of Mr. Cutler's staff,
14 Ms. Sherburne said that that was not acceptable, they
15 would not be interviewed under those conditions.

16 Q Did she state why?

17 A No, she just said that was not acceptable
18 to them. And I said, fine, then in that case then I
19 think we should interview the Treasury and RTC
20 people, get the White House people on record and make
21 them the offer and if they choose not to respond,
22 that was their choice, but I wanted to make them

1 respond on the record why they weren't.

2 Subsequently a letter was written asking
3 for them to abide by the same rules as the Treasury
4 and RTC people did, and they agreed to be interviewed
5 the same way.

6 Q Now, was your proposition to interview the
7 RTC and Treasury people and then have it put on the
8 record that the White House people weren't
9 interviewed, was that proposition ever communicated
10 to the White House?

11 A I don't know what was communicated to the
12 White House because I never had any direct contact
13 with Jane Sherburne or anyone from the White House.
14 That was my position to Francine, and that's what --

15 Q You communicated that to her?

16 A I told Francine that, yes, and Francine had
17 the discussion with Jane Sherburne. Exactly what she
18 said, I don't know, because I was never present, but
19 I do know that the White House changed their position
20 and decided to agree to have the White House
21 personnel interviewed the same way.

22 Q That was in response to a letter that was

1 sent over there?

2 A That's correct.

3 Q And what did the letter say?

4 A It was a letter of July 1, but I think

5 basically it said that this is what we're asking to

6 interview the people and under these conditions, and

7 it talked about the dates where we wanted to have

8 those people available. I think we were asking for

9 the 7th to the 11th or something like that.

10 Q During June of 1994, were there any

11 meetings held between members of Treasury IG with the

12 Office of Government Ethics?

13 A I know Francine did the one meeting, you

14 showed me the E-mail from her meeting over there. I

15 think the next meeting --

16 Q Actually I don't think I showed it to you.

17 I think you might have seen it, though. Let me put

18 it on the record. Let me show you what's an E-mail

19 Bates stamped 332 through 335. Take a quick look at

20 that.

21 (Witness reviewed the document.)

22 A I'm familiar with that document.

50

1 Q Just for the record, the documents are on

2 the table and I didn't show it to you at a previous

3 time or anything. It's I believe a four-page

4 document, interoffice memorandum dated 23 June 1994

5 from Francine Kerner to James Cottos, subject is

6 meeting with OGE.

7 Is this the E-mail you're referring to?

8 A Yes, it is.

9 Q And do you recall discussions that you had

10 with Ms. Kerner regarding this meeting?

11 A Yes.

12 Q What did she tell you about the meeting?

13 A Well, she just told us that she had had the

14 meeting with OGE and had received the questions that

15 they felt they needed to be addressed in our review

16 and then that she had put it in an E-mail the exact

17 concerns so I could pass it on to the investigators.

18 Q I would like to direct your attention to

19 the second page of the E-mail. First of all, did you

20 receive this E-mail?

21 A Yes, I did.

22 Q Under item number 4, which begins with the

1 first full paragraph of the second page, I would like
2 to direct your attention to the second full paragraph
3 of that page with the second to last sentence in that
4 paragraph, which reads "Regardless of the answer,
5 what did you understand your responsibility to be
6 concerning the disclosure of nonpublic information."

7 I believe that refers to questions that OGE
8 wanted you to ask?

9 A That's correct.

10 Q Were those questions asked of the
11 witnesses?

12 A Yes, they were.

13 Q How much of the -- what type of -- how did
14 the investigation deal with questioning witnesses
15 with regard to their understanding of policy
16 concerning disclosure of nonpublic information?

17 A I think they were specifically asked that
18 question during -- there was a list of questions that
19 the interviewers -- that the agents put together for
20 each of the interviews, and that was covered within
21 their interviews. They were asked that question.

22 Q And directing your attention to the --

1 towards the bottom of the page, there's a list of --
2 strike that.

3 You said there was a staff meeting on June
4 29?

5 A Yes.

6 Q And who participated in that?

7 A I believe it was Francine Kerner and Bob
8 Cesca and I. I'm not sure if that was a staff
9 meeting or a meeting.

10 Q Was it a meeting about the investigation?

11 A Yes.

12 Q And what was the substance of discussions
13 in the meeting?

14 A If I had my notes, I could address it
15 directly.

16 Q Let me just ask you if you have any
17 independent recollection of what the discussions
18 were.

19 A Well, I think that's when we were getting
20 ready to get started and actually get into the
21 investigation, so the discussion was when we would
22 get the documents, I guess they were in the process

1 of being received, how we were going to handle them
2 and going over who was going to be interviewed,
3 that's when we started talking about all the people
4 that were going to be interviewed.

5 Q So this was a logistical meeting with
6 regard to how you were going to conduct the
7 investigation?

8 A That's correct.

9 Q Did you coordinate this meeting with people
10 at the RTC or was this just how Treasury IG intended
11 to --

12 A I think this was just the Treasury IG
13 meeting. I think we subsequently had a meeting, I
14 believe, on July 1 with the RTC people.

15 Q I would like to show you a document, it's a
16 one-page document, Bates stamped 389 dated June 27,
17 1994.

18 MR. PORTNOY: I'm sorry, the Bates stamp
19 number?

20 MR. O'CALLAGHAN: 389.

21 MR. PORTNOY: Thank you.

22 BY MR. O'CALLAGHAN:

1 Q Have you seen document 389 before?

2 A Yes, I have.

3 Q When did you first see it?

4 A Probably on June 27 or June 28.

5 Q Did you see a draft of it?

6 A No, I didn't.

7 Q What is document 389?

8 A It's a memorandum from Bob Cesca, the
9 deputy inspector general, to Jean Hanson, the general
10 counsel, regarding the provision of legal advice and
11 services to the Office of Inspector General.

12 Q Okay. And was this the document you
13 referred to when we were discussing the June 22 staff
14 meeting?

15 A Yes.

16 Q Was the creation of this document discussed
17 at that staff meeting?

18 A I think it was -- this specific document,
19 it was discussed that something was going to be
20 arranged at that meeting and subsequently it became
21 this letter.

22 Q Do you know who wrote this letter or memo?

1 A As far as I know, Francine Kerner did.

2 Q I would like to direct your attention to
3 the second paragraph, which reads "Given the nature
4 of the inquiry, we have therefore agreed that
5 Ms. Kerner and members of her staff will report
6 solely to the inspector general on any matters
7 relating to the investigation."

8 Is your understanding that during the time
9 period March through July of -- actually June 27,
10 1994 through the end of July, 1994, that Ms. Kerner
11 and members of her staff reported solely to the
12 inspector general on matters relating to the
13 investigation?

14 A What is the question? I'm sorry, I missed
15 the question.

16 Q Sure, I'll state it again. Is it your
17 understanding that during the period June 27, '94
18 through August 1, 1994, that Ms. Kerner and members
19 of her staff reported solely to the inspector general
20 on any matters relating to the investigation?

21 A That's what this agreement says that they
22 were required to do, yes.

1 Q The question is, is it your understanding
2 that that is actually what occurred?

3 A I don't know if that occurred or not,
4 because I'm not sure who else Ms. Kerner discussed
5 the investigation with.

6 MR. PORTNOY: I would ask you to clarify
7 what you mean by "report," because report --

8 MR. O'CALLAGHAN: Relay any information
9 regarding any matters relating to the investigation.

10 THE WITNESS: Well, it says "without
11 authorization from the inspector general," so I don't
12 know. I know there were communications between
13 Ms. Kerner and the Office of General Counsel for the
14 department, but I don't know if those communications
15 were approved by Bob Cesca or not.

16 BY MR. O'CALLAGHAN:

17 Q Well, what communications are you aware
18 that occurred?

19 A Well, I know that there were some
20 transcripts given, I know there was communication
21 about lining up interviews of people, et cetera.

22 Q With regard to lining up of interviews, was

1 that a logistical communication?

2 A Yes, uh-huh.

3 Q Didn't go to the substance of the
4 investigation?

5 A Not that I'm aware of.

6 Q Do you have any reason to believe that it
7 would have gone to the substance of the
8 investigation?

9 A The only question I had, when one of the
10 attorneys was contacted by one of my investigators,
11 an attorney named John Bowman was called by one of
12 our investigators after they finished one of the
13 interviews to try and line up an interview.

14 Mr. Bowman's response was no, you can't
15 interview me, my name is not on the list and I
16 haven't been briefed, and the investigator
17 immediately called me and said, what's going on.

18 I called Mr. Cesca and subsequently talked
19 to Francine Kerner and Francine Kerner said that she
20 was giving a list of the interviewees for lining up,
21 to establish the interview list, the times and dates,
22 et cetera. And as far as the briefing, she said when

1 they said briefing --

2 Q I'm sorry, you said she was giving a list.
3 Who was she giving it to?

4 A To the Office of General Counsel to line up
5 the interviews. And as far as the briefing, she said
6 to the best of her knowledge, what they were talking
7 about was that someone was showing them Whitewater
8 documents that they may have been involved with
9 before they were interviewed by us, and I told her
10 that I felt that that was inappropriate.

11 Q When did you tell her that?

12 A As soon as I found out about it.

13 Q Did you tell her orally or was this --

14 A This was over the phone.

15 Q Did you take notes of the conversation?

16 A No, I didn't.

17 Q Why did you think it was inappropriate?

18 A I don't think that anyone should be briefed
19 before an interview by us. I think, again, as I --
20 same thing about my concern with the transcripts,
21 that when they're interviewed, they should be
22 interviewed about what they remember about it, and I

1 don't think that they should have advance notice,
2 whoever's employees they are.

3 Q Who at the Office of General Counsel was
4 provided with a list of the interview schedule?

5 A I don't know.

6 Q Are you aware of any other communications
7 that occurred between Ms. Kerner and Office of
8 General Counsel with regard to the investigation?

9 A Well, other than the transcripts, I know
10 subsequently -- subsequently I found out that she did
11 give them the transcripts at some point for them to
12 use to start preparing the Secretary's testimony.
13 Other than that, no, I don't know.

14 Q During the period June 27, '94 through
15 August 1, '94, did Mr. Kerner have any contact with
16 Ms. Hanson?

17 A I don't know.

18 Q Have you ever been told that she was, that
19 she did?

20 A No.

21 Q After review -- when you first reviewed
22 this document, you got it either on the 27th or 28th

1 of June?

2 A Yes.

3 Q Do you recall what your reaction was after
4 reading it?

5 A Yes, I do.

6 Q What was that?

7 A Well, I didn't feel that it resolved the
8 problem because the fact that there was going to
9 be -- that she was supposed to report for this
10 investigation solely to the inspector general did not
11 change the fact that her overall evaluation for the
12 year was still going to be done by the Office of
13 General Counsel. So to me this did not resolve the
14 problem.

15 Q Did you express that to anybody?

16 A Yes, I did.

17 Q And who did you express it to?

18 A I expressed that to Mr. Cesca and to
19 Ms. Kerner.

20 Q When did you do that?

21 A Immediately after I saw this letter,
22 because I was told that the letter was going to

1 resolve my concerns, and when I read it, I said this
2 does not resolve my concerns.

3 Q And what was their reaction?

4 A I was overruled. I was told that that's
5 the way it was going to be.

6 Q And was this a face-to-face meeting with
7 both of them or how did you express this?

8 A Probably at the meeting on the 29th. I
9 think there was a meeting on June 29 and this was
10 discussed.

11 Q I would like to show you a document Bates
12 stamped 448. It's a one-page document, handwritten
13 notes. Have you ever seen document 448 before?

14 A Yes, that's my handwriting.

15 Q And I believe the date on it, on the top,
16 is 6-30-94?

17 A Yes, it is.

18 Q Do you recall creating this document?

19 A Yes, I do.

20 Q What was this created in connection with?

21 A This was a meeting that we had. I earlier
22 said I thought it was July 1. This is the meeting at

1 my office, the Clark -- Clark Blight's name has been
2 cut off, along with Raisa's off the top of the
3 document.

4 Q I apologize for that. I think that's how
5 it came to us in the production.

6 A That could be. But at the meeting it was
7 Clark Blight, the RTC AIGA, Lou Sherman, his deputy,
8 and then the two agents who worked on it, Sarah
9 Herlihy and Joan Dwyer.

10 Q Those are RTC agents?

11 A Those are the RTC investigators. And then
12 on my side it was ROC, for Raisa Otero-Cesario at
13 that time, and my two investigators, Dean O'Rourke
14 and Fred Coco. Those were the people in attendance
15 at the meeting.

16 Q If you could go through the document with
17 me, read through the first line.

18 A Yeah. Mark Stein was one of the attorneys
19 for the Office of Independent Counsel. He worked for
20 Mr. Fiske. And we had at some point Francine was
21 asked to check with Mr. Stein about us using Kalkines
22 warnings with the people that we interviewed.

1 Q What are those warnings?

2 A Kalkines warnings are the fact that there
3 are no criminal actions pending, and therefore, if a
4 person refused to cooperate in the interview, we
5 could give them the Kalkines warning, which says that
6 they had to cooperate in the interview and that there
7 were no outstanding criminal implications to their
8 testimony.

9 Mr. Stein said he didn't feel that would be
10 necessary; everyone had cooperated with them and he
11 did not feel that it was a problem, and subsequently,
12 it was not a problem.

13 Q Did he participate in the meeting too or
14 was this just a sentiment that was related to
15 everyone at the meeting?

16 A No, this was sentiment that was related at
17 the meeting. I believe that Pat Black, the general
18 counsel at RTC, Office of Inspector General, had also
19 spoken to Mr. Stein and so we were comparing notes at
20 this meeting that we were on the same page about
21 this.

22 The second reference, the summary report

1 and the OGE review questions, that's when we were
2 anticipating before we even started how we were going
3 to write the report how we felt that it would come
4 together.

5 Q You wrote a summary of how you would do it?

6 A No, we discussed the fact that it would be
7 a summary report, just summarizing the -- all the
8 contacts that we would establish. We just talked in
9 general about how the report would look.

10 Then Nussbaum is -- most of the witnesses,
11 we had already decided who we needed to see and were
12 in the process of trying to line them up.

13 Mr. Nussbaum was in Italy and we didn't know if he
14 was going to be back or not, so we discussed that
15 about how critical he was and if since he was no
16 longer with the government working, he was no longer
17 working with the White House, if we would be able to
18 get him to cooperate or not because we really
19 couldn't compel him. That was part of that
20 discussion. That's the top of the document.

21 Q And was there a time factor for when you
22 could get Mr. Nussbaum in, concerns or --

1 A Well, at this point it was concern about
2 whether he would be back from Italy at all during the
3 time frame that we had to conduct this investigation.

4 Q What was the time frame in which you had to
5 conduct the investigation?

6 A We had hoped to be done by July 20 when we
7 started. That was our goal.

8 Q What was that hope based on?

9 A That hope was based on the Secretary was
10 supposed to testify, I believe, on the 26th, so we
11 hoped to have the report done by the 20th so that the
12 report would be done before the Secretary had to
13 testify.

14 Q And why did you want to have the report
15 done before the Secretary had to testify?

16 A So that the Secretary would be able to have
17 an idea of what exactly happened within the
18 department and how many contacts there were,
19 et cetera, before he testified.

20 Q And had the Secretary expressed a desire to
21 have the report done by that time?

22 A Yes, he had.

1 Q If you could go through the next part.

2 A The next part is information that I
3 received from Francine. That's why the note
4 "Francine" on the side. She had talked to Jane
5 Sherburne, who worked for -- who was on Lloyd
6 Cutler's staff at the White House, and Jane Sherburne
7 had told her that she was acting as an investigator
8 for the White House doing a report for OGE about
9 the -- from the White House perspective on these
10 contacts.

11 Q And what was your knowledge of that
12 activity, Jane Sherburne acting as an investigator
13 doing the report for the --

14 A This is what Francine told me. She said
15 she was acting as an investigator doing a report for
16 OGE. I subsequently found out that they weren't
17 taking any statements, that everything was oral, so I
18 didn't understand what kind of report --

19 Q I'm sorry, when you say they weren't taking
20 any statements, who were you referring to?

21 A Jane Sherburne and the White House team,
22 whoever was on that team, but Jane Sherburne,

1 Francine depicted them as doing an investigation of
2 White House for OGE. And then the rest of the
3 discussion was about the documents.

4 Q Well, just if I could keep you on that
5 issue, did you ever discover what type of
6 investigation the White House did, if they did any?

7 A I don't know if you could call it an
8 investigation. I think they talked to people at the
9 White House about any contacts with Treasury, but as
10 far as I know, there were never any interviews
11 written up, there was never any report written up.
12 That came up later in our discussion about comparing
13 their work and our work.

14 Q And who had discussions with the people at
15 the White House with regard to the transcripts?

16 A Francine Kerner, and subsequently, I
17 believe, Pat Black, the general counsel from RTC,
18 inspector general, was also involved in some of the
19 discussions with Jane Sherburne.

20 Q But my question, I guess, is trying to
21 address did you find out who at the White House was
22 conducting the interviews or discussions with people

1 in the White House about White House --

2 A Jane Sherburne is what I was told.

3 Q Do you know what form the interviews took
4 or discussions?

5 A No, no, I don't.

6 Q Did anyone at OGE ever relate to you that
7 Sherburne was doing an investigation of a report for
8 OGE?

9 A No. Subsequently -- subsequent to this
10 conversation, Clark Blight, I believe, told me that
11 he and Pat Black had spoken with OGE and that OGE was
12 not aware that the White House was doing any report
13 for them.

14 Q Did you ever -- was the White House
15 directed to do an investigation by anybody?

16 A Not that I'm aware of.

17 Q What was your reaction to Mr. Kerner
18 telling you that Jane Sherburne said she's acting as
19 an investigator doing a report for OGE?

20 A I think this is when we were still going
21 through the discussions about how the White House
22 people would be interviewed, and her point was that

1 it would be easier for us to share our transcripts
2 rather than the White House have to go interview our
3 people separately, and I think that was the
4 discussion at that point. And I think she at one
5 time at least had mentioned the fact or the
6 possibility of Jane Sherburne sitting in on our
7 interviews of the Treasury and RTC people, and I said
8 no.

9 Q Why did you say no to that?

10 A Because I felt that that would certainly
11 intimidate the witnesses, and I didn't think it was
12 appropriate.

13 Q Was that issue ever revisited with you
14 again?

15 A No, no, it wasn't. That pretty well died.

16 Q Was that an oral discussion?

17 A Yes, it was.

18 Q When did that occur?

19 A During this same time period, June 29, June
20 30, before the letter was sent over. And I think the
21 letter was sent July 1.

22 Q Which letter was that?

1 A That was the letter signed by Jack Adair,
2 the inspector general at RTC, and Bob Cesca, acting
3 inspector general at Treasury, to Lloyd Cutler at the
4 White House.

5 Q The next portion reads "Written statement
6 that nothing will be shared with any White House
7 witnesses."

8 What does that refer to?

9 A That's what Jane Sherburne told Francine,
10 that they would be willing to give us a written
11 statement that nothing would be shared with any other
12 White House witness. That was when that was first
13 broached.

14 Q Okay. And what is she referring to, that
15 nothing will be shared?

16 A I think at that point they were still
17 talking about trying to get our transcripts after the
18 interviews.

19 Q And when did the first discussions with
20 regard to the White House trying to get your
21 transcripts after the interviews occur?

22 A Possibly back then. I think Jane Sherburne

1 may have raised it from the beginning when she found
2 out that we were doing the investigation, but again,
3 that was conversations between she and Francine.

4 Q Did Francine tell you in late June that
5 Sherburne had approached her about getting
6 transcripts?

7 A I think that's what this note was, that
8 they would be willing to give us a written statement
9 that nothing would be shared.

10 Q And what was your reaction to that?

11 A My reaction was that they still shouldn't
12 get any of the transcripts until we were done.

13 Q Was this information shared with people
14 from the RTC?

15 A Yes, we had discussions, certainly the RTC
16 people, at least Clark Blight and the investigators
17 felt the same way that I did, that those transcripts
18 should not be shared.

19 Q Did this come up in the June 30 meeting?

20 A No, I don't think so. I think the June 30
21 meeting was all the investigators, we were talking
22 about the logistics of doing the investigation and

1 how we were going to match up the people and things
2 like that.

3 Q Above the Francine and Jane Sherburne note,
4 there's an entry which reads "Voice mail at 9:20," is
5 that an a.m.?

6 A Yes, I believe that was Francine and Jane
7 Sherburne had a tough time going back and forth, and
8 I just think that she had told me that she had left
9 her a voice mail at 9:20 a.m. That's all that was.

10 Q Could you describe to me how the
11 organization of the investigation was set up with
12 respect to Treasury IG's office and RTC IG's office
13 and the Office of Government Ethics and anyone else
14 who might have been involved in the investigation?

15 A Yeah. It was fairly straightforward. We
16 had each dedicated two employees, two investigators
17 to this. They were -- all four of them were GS-14
18 senior level investigators. Two of my desk officers
19 and two of the RTC IG desk officers.

20 And the agreement was that they would pair
21 up so that there would be no question on the
22 interviews. If it was an RTC person, then an RTC IG

1 person would be there to justify the interview. If
2 it was a Treasury person, the same way. They paired
3 up themselves as far as which one would be with which
4 one. We just decided it would be one Treasury
5 investigator and one RTC investigator.

6 Q When you say justified, does that lend
7 authority to the interview?

8 A That's correct, if anyone had any problems
9 with it. For instance, if the two -- my two
10 investigators wanted to interview an RTC person and
11 the RTC person did not want to be interviewed, they
12 were perfectly within their rights not to be
13 interviewed by us because we don't have direct
14 supervision over them, so that was the reason that we
15 paired them up, one from each bureau.

16 And then they would do the interviews, the
17 transcripts came back to us, we would copy and send
18 them over there. And we used the RTC office space as
19 somewhat of a neutral ground. They had a building
20 very close to the White House, close to main Treasury
21 that would be accessible for everyone. It was good
22 office space, I was told. I was never actually over

1 there. But it was neutral ground, so it was decided
2 that that would be where the interviews would take
3 place.

4 Q Did you ever participate in any of the
5 interviews?

6 A No, I did not.

7 Q Was this -- would you characterize it as a
8 joint investigation between the two --

9 A Yes, I would.

10 Q -- two agencies?

11 A Yes, I would.

12 Q Did one agency take a lead role?

13 A I guess that we had the lead role, since
14 the Secretary had initially asked us and the
15 Secretary was the chairman over RTC, so if in fact
16 there was a lead, I would suppose it would be our
17 office, the Treasury inspector general.

18 Q With regard to documents collected in
19 connection with the investigation or information
20 gathered in connection with the investigation, was
21 that information that was shared by both agencies?

22 A Yes, all of the information, whenever we

1 got any documentation in, it was turned over to the
2 four investigators. They had first shot at all the
3 documents. Same thing with the transcripts. They
4 got the first copy because they used them to prepare
5 for interviews.

6 If you saw an interview schedule, they were
7 pretty tight, so basically, they would finish an
8 interview, have maybe an hour or two in between and
9 then go on to the next interview, so the teams worked
10 among themselves to try and sit down and talk to each
11 other if there was something that came up in one
12 interview that needed -- that the other team would
13 need in their next interview, et cetera. That was
14 the main focus, was to make sure that the agents had
15 the information and shared the information, rather
16 than spending a lot of time briefing me or Clark.

17 Q And the information they gathered, did it
18 belong to both agencies?

19 A Yes, it did.

20 Q I would like to show you a document Bates
21 stamped 006272 and 006273. Just take a moment to
22 review that and let me know when you've completed

1 your review.

2 (Witness reviewed the document.)

3 A Yes, I'm familiar with this document.

4 Q And when did you first see this document?

5 A Probably July 6 or July 7.

6 Q And in what context did you see it?

7 A Francine Kerner sent a copy over to me,
8 faxed it over to me, I believe, to show me, or
9 probably just put it in with the documents when we
10 actually got the documents from the White House, and
11 to let me know the restraints in handling those
12 documents.

13 Q And who entered into this agreement with
14 the White House regarding the handling of documents
15 that they provided?

16 A Bob Cesca and Jack Adair, the two inspector
17 generals.

18 Q Did this seem like a reasonable agreement
19 to you?

20 A Yes, it did.

21 Q With regard to the documents that were
22 provided to you by any other agencies, were similar

1 agreements entered into?

2 A There were no written agreements, no.

3 Q Did you have agreement with RTC with regard
4 to documents that they provided in connection with
5 the investigation?

6 A As far as a written agreement, I don't
7 believe I ever saw one, no.

8 Q Well, did you have an unwritten agreement?

9 A Well, I think it was -- certainly there was
10 concern about any criminal information or whatever
11 being shared, and being criminal investigators, we
12 were very conscientious about those documents.

13 Q When you say you were conscientious about
14 them, how were you conscientious about them?

15 A Well, we're obviously not going to share --
16 make public any of the documents regarding any
17 ongoing criminal investigations, et cetera.

18 Q And with regard to the transcripts that
19 were produced in connection with the investigation,
20 did any of those contain confidential information
21 that belonged to the RTC?

22 A I'm not sure if it was attached to the

1 transcripts or not. There was some information that
2 was included. I don't believe it was in the
3 transcripts, no.

4 Q With regard to the interviews, was
5 confidential information discussed during the course
6 of interviews that were taken?

7 A Yes.

8 Q And what was your -- what is your
9 understanding of the confidential information that
10 were contained in the transcripts?

11 MR. PORTNOY: I don't believe he testified
12 to that.

13 BY MR. O'CALLAGHAN:

14 Q Was there confidential information
15 contained in the transcripts?

16 A I think there was discussion of some
17 criminal referrals in the transcripts, yes.

18 Q Okay. And what was your understanding as
19 to -- with regard to the confidential nature of that
20 information?

21 A What do you mean, my understanding? I'm
22 not sure what --

1 Q Was that information considered to be
2 confidential with regard to the criminal referrals?

3 MR. PORTNOY: By whom?

4 THE WITNESS: Yeah, I'm still --

5 BY MR. O'CALLAGHAN:

6 Q Did Treasury recognize that that
7 information was confidential?

8 A I'm not sure if I can answer that
9 question. I don't -- I'm still not --

10 Q That's fine. We can get back to it.

11 I would like to show you a document Bates
12 stamped 898. I believe the date in the course of
13 copying might have been chopped off. I think it's
14 7-7-94. Have you seen 898 before?

15 A Yes, I have.

16 Q And when did you see that?

17 A Well, that's my handwriting.

18 Q Do you recall when you wrote it?

19 A On 7-7-94.

20 Q Could you read the first four lines that
21 appear on the page?

22 A "She's reviewed the White House

80

1 documents" --

2 Q I'm sorry, the first line.

3 A First line is "Francine." And again, that
4 means that this is based on a conversation, probably
5 phone conversation, with Francine. "She's reviewed
6 the WH documents, only four or five sheets
7 important. Will be ready for pickup at 10:30."

8 Q What does that entry refer to?

9 A These are the documents that the White
10 House had turned over to us to be included in our
11 review.

12 Q And did anyone else review the White House
13 documents other than Ms. Kerner?

14 A Steve McHale is an attorney for the Office
15 of General Counsel for the department, and Francine
16 got the records from him.

17 Q Were these documents that were in
18 Treasury's possession prior to investigation?

19 A I'm not -- well, this is when they were
20 turned over to us. I don't know when Treasury got
21 them. 7-7 is when we finally got them, the Office of
22 Inspector General got them. I don't know when

1 Treasury Department got them.

2 Q The question is, were these -- the question
3 I have is, were these White House documents requested
4 in connection with the investigation that you were
5 conducting?

6 A Yes, they were.

7 Q Who were they transferred to from the White
8 House?

9 A From the White House, the White House gave
10 them, as far as I know, to the Office of General
11 Counsel for Treasury. We got them, the inspector
12 general got them, from Steve McHale, who was an
13 attorney with that office.

14 Q Why were the documents delivered to the
15 Office of General Counsel?

16 A I don't know.

17 Q Was a request made by the Office of General
18 Counsel for the documents?

19 A I don't know why they got the documents.
20 We got them from them to be used in our investigation
21 after the request to the White House, so I don't know
22 when they got them or why they got them.

1 Q Did the request originate from the Office
2 of Inspector General for the documents?

3 A Yes, that was in a letter on July 1.

4 Q Were you surprised that the documents were
5 delivered to the Office of General Counsel?

6 A No. I don't know if they had them before
7 that or not. We asked for the documents from the
8 White House and got them on July 7.

9 Q But you received them from the Office of
10 General Counsel; is that right?

11 A Francine Kerner received them from the
12 Office of General Counsel, yes.

13 Q Did anyone else review them other than
14 Ms. Kerner prior to this point?

15 A Prior to that point, not that I'm aware
16 of. No one in my office -- when we got the
17 documents, my office, the four investigators and my
18 deputy and I reviewed them, yes.

19 Q Did you get a full set of documents?

20 A To the best of my knowledge.

21 Q Your note says "Four or five sheets
22 important" or "Only four or five sheets important."

1 What does that refer to?

2 A That was Francine's opinion that she had
3 leafed through documents and that she felt that only
4 four or five sheets in all of the documents were
5 important.

6 Q And after you reviewed the documents, what
7 conclusion did you reach?

8 A I generally agreed with her that there
9 weren't a lot of documents that were relevant.

10 Q How many documents were produced to you in
11 connection with your request?

12 A I have no idea.

13 Q Do you know how many boxes?

14 A Probably a banker's box, I think one
15 banker's box of records. I don't know how many
16 sheets that was.

17 Q Could you describe to me specifically what
18 your role was in the conduct of the investigation?

19 A My role?

20 Q Correct.

21 A I was responsible for getting the report
22 done, to supervise the investigation and to make sure

1 that everyone was available. The investigators were
2 trying to do the interviews, so I was trying to
3 coordinate the production of the transcripts, review
4 the documents, coordination with getting the people
5 lined up for the interviews and then writing the
6 report, the preparation of the report. Those were my
7 responsibilities.

8 Q Who contributed to the writing of the
9 report?

10 A The four investigators, my deputy and I and
11 the -- Francine Kerner, Bob Cesca and the AIGI,
12 deputy AIGI, inspector general and deputy inspector
13 general at RTC, because we did the first draft and
14 then subsequently we ended up having two long
15 meetings over at RTC where it was further developed
16 and finalized. So everyone was involved.

17 Q I would like to ask you to look at document
18 Bates stamped 856. It's another E-mail. This one is
19 from James Cottos to Francine Kerner. I believe the
20 date is 7 July of 1994, 7:43 a.m. Have you seen this
21 document before?

22 A Yes, I have.

1 Q When did you first see it?

2 A I created it.

3 Q What's the subject of 856?

4 A The subject is Whitewater.

5 Q The first line of the note -- first it says

6 "Francine." It reads "I need to state again

7 something I thought we had discussed. I do not want

8 you contacting my investigators directly during this

9 Whitewater matter."

10 What does that refer to?

11 A During the course of the first interviews

12 on July 6 over at the RTC building, Fred Coco, one of
13 the investigators, received a call from Francine

14 Kerner during the course of the interview. The phone
15 rang, he picked it up and she wanted to know how the
16 interview was going. Mr. Coco told her he was in the
17 middle of the interview and didn't have time to talk
18 to her right now and hung up.

19 Q This was while he was conducting the
20 interview?

21 A That's correct. Immediately when the
22 interview was done he called me and wanted to know

1 why Francine Kerner was calling him in the middle of
2 the interview. And I told him I would take care of
3 that. Then subsequently the next morning we sat down
4 and talked further about it, and that's when I sent
5 this E-mail to Francine.

6 Q What was her reaction?

7 A She said she wanted to know -- she wanted
8 to be kept up to date on how the interviews were
9 going and what kind of information was being
10 received. And as I said in here, that I did not want
11 her contacting the investigators directly but I
12 wanted her to go through me because that was not her
13 job to do the supervision of the agents, that was my
14 job, and that they would -- they were conducting
15 business and didn't have time to talk to her.

16 The same thing on the briefings. I mean,
17 it wasn't like we had a lot of time to sit down, do
18 an interview and then everybody sit around and
19 discuss it. Because of the short time frame, we did
20 the interview and moved on and started getting ready
21 for the next interview. So that's what I was trying
22 to tell her in this E-mail.

1 Q Did she state why she wanted briefings?

2 A She wanted to know how the interviews were
3 going and what information was being received, and I
4 told her she would receive that information later.

5 Q Did she state for what purpose she wanted
6 the information?

7 A No, she just said that she wanted to know
8 how things were going.

9 Q Just general curiosity as to what was going
10 on?

11 A Well, I think that was one of the concerns
12 we had, that she wanted to be very much involved in
13 the investigation and I was trying to limit her role
14 in this -- in the investigation.

15 Q And why was that?

16 A Because I was still concerned about her
17 reporting chain.

18 Q At the end of the E-mail, last sentence
19 says "I'll get the brief by the investigators and
20 pass that information on to you and Bob."

21 What does that refer to?

22 A That refers to her and Bob Cesca.

1 Q Was that your general practice during the
2 course of the investigation or did you do this in
3 response to --

4 A Well, in fact, as far as the debriefings,
5 they were few and far between, because we -- again,
6 it was very hectic, so it was not a matter of sitting
7 down once a day or every other day and debriefing Bob
8 and Francine, because we didn't have time.

9 Q Who formulated the questions that were used
10 for the interviews or depositions?

11 A Generally the investigators themselves. We
12 discussed them, my deputy and I. I think Clark and
13 his deputy probably had some suggestions. And for
14 some of the witnesses, Francine sent me some E-mails
15 with proposed questions.

16 Q And which witnesses did she send you
17 proposed questions for? Were there specific ones or
18 sporadic?

19 A Yes, it was sporadic, but I think certainly
20 Jean Hanson, Dennis Foreman and Roger Altman were
21 three that I specifically remember that she sent me
22 questions on.

1 Q Did she -- were these generally Treasury
2 witnesses?

3 A Yes.

4 Q Did she send you questions for officials
5 from any other agencies?

6 A I don't recall receiving questions for any
7 other -- anyone outside of Treasury.

8 Q Had you asked her to prepare questions for
9 you for these witnesses?

10 A No, I didn't.

11 Q What was your reaction when she sent you
12 these recommendations?

13 A I gave the questions to the investigators.
14 Normally we got them too late to really be useful.
15 Normally the investigators would -- they had a
16 standard list of areas of concern, and then generally
17 the night before they would sit down and talk about
18 specific questions for specific interviews.

19 Normally I would get her questions -- she
20 would put them on the E-mail late at night, so I
21 wouldn't get them until the next morning, so if I
22 would pull them off the fax machine or off my E-mail

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1 at 7:00 when I got in in the morning, if the agents
2 are going to start interviews at 8:00, there wasn't a
3 lot of time for them to take these questions and use
4 them.

5 Her stance seemed to be just take my
6 questions and start going through them. You don't
7 need to do your other work. And I was not real happy
8 with that because these investigators were
9 outstanding investigators, in my opinion, and they
10 knew their job. It was almost insulting to them. If
11 there were specific things that she wanted asked,
12 that was fine, but to say, here is the questions, ask
13 them in this order, I thought that was inappropriate.

14 Q When did she communicate to you that that
15 was her feeling as to how her suggestions should be
16 received?

17 A I think she put that in some E-mails and
18 some of the faxes, here are the questions, ask them
19 in this record.

20 Q I would like to show you Exhibit 1149.
21 It's a one-page document. Appears to be an E-mail
22 dated July 8 from Francine Kerner to you and cc,

1 Raisa Cesario. Subject is proposed Foreman
2 questions. Is this an example of -- an E-mail cover
3 for the questions that were being transmitted by
4 Ms. Kerner to you?

5 A Yes. And if you notice, the time it was
6 sent was 1:34 a.m. Again, I would have received it
7 at 7:00, and I don't recall specifically, but I'm
8 sure Dennis Foreman was that morning. That's what I
9 kept trying to tell her. If you want us to use
10 questions, you have to get them to us earlier than
11 the morning of the interview.

12 Q Do you recall specifically whether any of
13 her questions were actually used in the interviews?

14 A I couldn't tell you that. As I said, I
15 passed them on to the investigators, and I think they
16 went through them. Depending on how much time they
17 had, they would look through to see if there was
18 anything different than what they had on list, the
19 specific line of questioning or things like that.
20 They may have used it, may not have. I couldn't
21 really answer that.

22 Q Did she ever state to you why she was

1 proposing questions?

2 A No. I think it's one of the -- one of the
3 concerns that we had on a lot of investigations, that
4 she wanted to be much more involved in investigative
5 matters than I felt was her position.

6 Q What was your understanding of what her
7 position should have been with regard to the
8 investigation?

9 A Her -- in this particular investigation, I
10 understood her job to be coordinating with the White
11 House, coordinating with the attorneys for the
12 witnesses, as far as giving them the transcripts for
13 any corrections, et cetera, and for lining up
14 witnesses from the Office of General Counsel. That's
15 what I thought her role was going to be.

16 Q So you thought it was going to be more of a
17 logistical role?

18 A That's correct.

19 Q And were you ever told by anyone at any
20 point that she was going to have more than a
21 logistical role?

22 A No, other than the fact that I told Bob

1 Cesca that I didn't feel she should be involved in
2 the interviews, that she should not be involved in
3 the writing of the report, and he basically said
4 that, you know, she could be involved in whatever she
5 wanted to be involved in.

6 Q Was she specifically involved in any of the
7 interviews?

8 A No, she was not. Her only involvement was
9 submitting questions to us.

10 Q Did you ever express to her that you didn't
11 think it was appropriate for her to be writing
12 questions or submitting them?

13 A No, I think the only thing I told her was
14 that if she wanted to give us questions, she needed
15 to get them to us earlier.

16 Q And with regard to Exhibit 1149, proposed
17 Foreman questions, who is Foreman?

18 A Dennis Foreman was the deputy general
19 counsel at the Treasury Department.

20 Q During that time, was Ms. Kerner in any
21 kind of reporting line to Mr. Foreman?

22 A She reported directly to Mr. Foreman for

1 her evaluation purposes.

2 Q Do you know if Mr. Foreman contributed in
3 any way to the questions that she submitted to you?

4 A No, I don't.

5 THE WITNESS: Can we take a restroom
6 break?

7 MR. O'CALLAGHAN: Sure.

8 Off the record.

9 (Recess.)

10 MR. O'CALLAGHAN: Back on the record.

11 BY MR. O'CALLAGHAN:

12 Q Mr. Cottos, earlier you had mentioned that
13 you told Mr. Cesca that you didn't think that
14 Ms. Kerner should be involved in the interviews or in
15 the drafting of the report; is that correct?

16 A That's correct.

17 Q Did Ms. Kerner contribute to the drafting
18 of the report?

19 A Yes, she did.

20 Q What role did she play in the drafting of
21 the report?

22 A Part of the overall group that was going

1 through the report. As I said, the investigators and
2 my deputy and I prepared the first draft, but then it
3 went from there. We sent it to RTC, started faxing
4 it back and forth, and Bob Cesca and Francine were
5 involved in reviewing it. And then we had two
6 meetings over at RTC around the conference table
7 where it was actually finalized, so it was not a
8 matter of any one person writing it. There were a
9 lot of people involved in writing the report.

10 Q And what form did the report take?

11 A It was a -- basically a chronology of all
12 the contacts, starting with the -- starting in
13 September and then going through during the period
14 that we looked at.

15 Q And without getting into too much detail,
16 how was the chronology developed?

17 A Well, basically we wanted to keep this very
18 easy, and this was not -- in fact, it was an easy
19 report to write in that respect, because what we did
20 was if there was a date that there was a contact, for
21 instance, a telephone contact, we would put what each
22 person involved in that telephone -- on each end of

1 the conversation said, so we would say, okay, on this
2 date, one person called another, this is what one of
3 the people said happened during that phone
4 conversation, this is what the other person said
5 happened.

6 If it was a meeting, it was the same
7 thing. We interviewed everyone that attended the
8 meeting and wrote down based -- everything came from
9 the transcripts. It wasn't, you know, this is what
10 we think -- what they thought the meeting -- this is
11 what they said, and that's what we put in the
12 report.

13 So for every person there, we put what they
14 said based on their transcript. If they didn't all
15 agree, which they didn't if you read the report, all
16 we could put down was this is what they said.

17 Q You just reported what they said in the
18 interviews?

19 A That's correct.

20 Q Did you use any written documentation to
21 put what the testimony was in context? If there were
22 any handwritten notes taken at phone conversations,

1 were those --

2 A They were marked as exhibits, attached as
3 exhibit to the report, yes.

4 Q Were they incorporated into the chronology
5 in any way or was the chronology basically what the
6 testimony was?

7 A Chronology was basically the testimony, but
8 there were references made to the exhibits, which
9 could have been notes, et cetera. And I think the
10 other thing in the report is it cites specific places
11 in the exhibits, so it would have the interview of
12 Cottos, page 4 or page 15 or whatever.

13 Q Okay. And I would like to show you a
14 document Bates stamped 35 through 38. Take a moment
15 to review it and let me know when you've had a chance
16 to go through the entire document, if you feel the
17 need.

18 A I'm familiar with the document.

19 Q When did you first see this document?

20 A The morning of July 21, it was on the fax
21 machine -- I'm sorry, July 22. No, I'll take that
22 back. I'm sorry. July 21.

1 Q And also, to help you out, on the top
2 there's a fax line that says July 21, '94.

3 A That's correct. And it was sent around
4 midnight, so that morning when I got in the office,
5 this was on the fax machine.

6 Q And what is this document?

7 A It's comments that Francine Kerner had
8 about the first draft of the report.

9 Q And where did she send this report from?

10 A She sent it from Kinko's Copies close to
11 her home, to my office.

12 Q Did she alert you before she sent it that
13 she was going to be sending you this document?

14 A No, she didn't.

15 Q What was your reaction when you received
16 it?

17 A I read her comments.

18 Q Let me try to do this incrementally.

19 A Okay.

20 Q The first line -- first it says "Bob and
21 Jim"; is that correct?

22 A Yes, yes.

1 Q You have a better copy than I do, which is
2 the way it should be. The first line reads "Bob
3 asked me to identify 'red flags' in your 4:30 p.m.
4 chronology. Here they are."

5 Did you know that -- who is Bob?

6 A Bob is Bob Cesca.

7 Q Did you know that he had asked her to
8 identify red flags?

9 A No, I didn't.

10 Q And what was your reaction to that, just
11 that first line?

12 A That didn't particularly surprise me.

13 Q What was your understanding as to what red
14 flags were?

15 MR. O'CALLAGHAN: Off the record.

16 (Discussion off the record.)

17 BY MR. O'CALLAGHAN:

18 Q The question was on the first line there's
19 reference to red flags.

20 A Yes.

21 Q And I was just asking if you had an
22 understanding as to what she meant by red flags.

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1 A I interpret that to be some concerns that
2 she had with the chronology the way it was written.

3 Q And did she relate to you what her general
4 concerns were with the chronology the way it was
5 written?

6 A Well, I think that's what this document is.

7 Q Did she tell you -- independent of the
8 document, did she give you a summary?

9 A Subsequently she did.

10 Q What did she say?

11 A She felt that it was slanted, a slanted
12 document.

13 Q In what way?

14 A She felt we were being unfair to some of
15 the people in what we had written.

16 Q Did she give you a general description of
17 how she thought it was unfair?

18 A No. I think her specific comments are
19 right here in the statements. When she says
20 statement here, that's something that we had in the
21 first draft, and then what she wrote as a problem is
22 her concerns with it.

1 Q Did you understand that to be her problem
2 or more than one person's problem with the statement?

3 A As far as I knew, these were her comments.

4 Q What was your reaction when you received
5 this document?

6 A I disagreed with a lot of the comments that
7 she had.

8 Q If I could ask you to go through the
9 document, if you could point out where the
10 disagreements were.

11 A I think a lot of the things that she felt
12 needed to be in there I did not feel needed to be in
13 there. I'm trying -- this is a bad copy. Where she
14 talks about things being subject to interpretation,
15 my whole aim of this was to keep away from
16 misinterpretation, to just say what the person stated
17 in the transcript, so there was no interpreting.

18 In other words, it wasn't writing a normal
19 report. This was actually going exactly to the
20 quotes, each person said this about that meeting.

21 Q And are you referring to -- under page 3 --
22 on the first page of this document, there's a

1 reference to page 3, statement "Nussbaum stated he
2 called Sloan into his office and directed Sloan to
3 work with Hanson on the matter (Nussbaum page 10)."
4 Then under the heading of problem, it says "Work on
5 what language is subject to interpretation."

6 A That's one of the comments. There's
7 several comments just below that, the next one.

8 Q If you could just address that, it would be
9 great.

10 A The next one below that is "Sloan recalled
11 that Hanson mentioned eight or nine referrals and the
12 Clintons were mentioned in the referral along with
13 the Clinton '84 complain. Sloan, page 8." And the
14 problem as she cites is "Mentioned what about eight
15 or nine referrals? Language subject to
16 misinterpretation."

17 Comments like that -- I thought we were
18 trying to be pretty straightforward by going straight
19 to it, so that was the concern, I think, with a lot
20 of the comments that she had in general.

21 Q Okay. Now, there are some handwritten
22 notes on the document. Who put those there?

1 A That's my writing.

2 Q A lot of the -- great majority of the
3 document is crossed out. And what are the
4 crossing-outs or the slashes in the material?

5 A The crossout is, what we did was go back,
6 and when we checked the transcripts, we pulled the
7 transcripts out, and this is what we ended up doing
8 at the final meeting.

9 We put all the transcripts on the table,
10 and when we went through the report, we went line by
11 line, and if anyone had a question about it, we went
12 directly to the transcript and read it. You know, if
13 it said page 70, we went to page 70 and said, okay,
14 what does it say and is that what it says in the
15 report. And what we did here with their comments was
16 pull the transcripts out, and this was my deputy and
17 I --

18 Q What is your deputy's name?

19 A Raisa Cesario. We would go through and
20 review what we had. After we looked at it, we were
21 lining through. That's what the line-outs were for.

22 Q That indicates you were finished reviewing

1 that section?

2 A That I had reviewed it, yes.

3 Q I would like to you look on the second page
4 of this document, which is Bates stamp 036, under
5 page 4 -- actually, I'm not going to ask you a
6 question about that.

7 On the third page, page 8, third page of
8 this document references, I guess, portions of page
9 8. Did you have any differences with Ms. Kerner with
10 regard to her problem with that statement?

11 A Yes. You're talking about the statement
12 from page 8 about Dennis Foreman?

13 Q Correct.

14 A Yes. Eventually, later on on the 21st, she
15 and Francine and Bob Cesca came over to my office,
16 actually we were in Raisa's office, my deputy's
17 office, and we went through the chron we had and
18 through these changes, the proposed changes that
19 Francine had.

20 And in the discussion of this thing, I
21 thought it was very relevant that Dennis Foreman --
22 several witness -- well, not several witnesses.

1 There was some witnesses that had said there had been
2 an ethical opinion rendered about the recusal, and
3 when we interviewed Dennis Foreman, he said yes, he
4 had seen the talking points and said he didn't see
5 any problem with it, but he said very specifically
6 that he saw it and looked at it for less than two
7 minutes because Jean Hanson was on her way to the
8 meeting and they passed in the hall, she handed it to
9 him, he looked at it and said, no, I don't see any
10 particular problems with it.

11 So to me that was very different than
12 somebody sending something to their attorney and
13 saying, would you research this and give me an
14 opinion whether there's a problem with it. And
15 that's why I thought it was very significant that we
16 put in there that Mr. Foreman said that based upon a
17 two-minute review, he didn't have a problem, and
18 Ms. Kerner didn't agree with that, she said, what's
19 the difference if he had it two minutes or two hours
20 or two days. We had a very long discussion about
21 that because I thought that was very relevant.

22 Q Okay. And her expressed problem on the

1 statement on page 8 says "This is hitting below the
2 belt." Were you surprised that she used that kind of
3 language?

4 A No.

5 Q Why is that?

6 A We had had some discussions about this. I
7 think at one point during the conversation when we
8 were going through these proposed changes or her
9 proposed comments, I made several -- I made a comment
10 to her that this was not the Jean Hanson defense team
11 and that we were trying to report facts here, not
12 trying to protect anyone or slant anything one way,
13 that we were trying to state the facts. And I felt
14 that she was trying to push it in a certain
15 direction.

16 Q And when did that occur?

17 A That was at the meeting on the 21st.

18 Q 21st of?

19 A Of July.

20 Q What was her reaction to that?

21 A She wasn't real happy about that; she felt
22 she was trying to make it more accurate.

1 Q Had you expressed concerns with her about
2 this previous to the July 21 meeting?

3 A I think this was the first time that we had
4 put something in writing. As I said, this was the
5 first draft, so that's when it really surfaced. I
6 mean, we had talked in general about line of
7 questioning and things like that, but that's the
8 first time that it really hit it about the report.

9 Q So did this report heighten or lessen your
10 anxiety about Ms. Kerner working on the
11 investigation?

12 A It heightened it.

13 Q In what respect?

14 A Well, because I think there were -- you
15 know, I may have had some concerns before, but this
16 was very overt, about actions that were being taken
17 to try to change the content of the report.

18 Q Did you bring this to the attention of
19 Mr. Cesca?

20 A Mr. Cesca was present during the
21 conversation, during the discussion.

22 Q And what was his reaction?

1 A He said, we've got to keep to the facts.
2 He was very concerned about the conversation between
3 Francine and I.

4 Q Well, what were his concerns?

5 A Well, the concern was that, you know, we
6 keep to the business at hand of writing an accurate
7 report.

8 Q Did Ms. Kerner make any assurances to you
9 that she was not acting on behalf of Ms. Hanson or
10 anyone else at general counsel?

11 A She never said she was acting on behalf of
12 Ms. Hanson. She stated she was trying to make the
13 report as accurate as possible.

14 Q I'm sorry, you misunderstood. The question
15 was whether in response to your -- that this isn't
16 the Jean Hanson defense team, that she related to you
17 she wasn't working on behalf of Ms. Hanson?

18 A Yes, that's what she said, she was only
19 concerned with the straightforwardness of the report.

20 Q I wasn't trying to indicate that she had
21 indicated that, so just to be clear on the record.

22 Actually, did anyone else other than

1 Mr. Cesca, Ms. Kerner and you see Exhibit 35, the
2 document Bates stamped 35 through 38?

3 A My deputy, Raisa, and Fred Coco, who was
4 there for part of this meeting, one of the two
5 investigators from my office.

6 Q Did they have any reaction to the document?

7 A They felt pretty much the same way I did.

8 Q And did they express that during the
9 meeting?

10 A No. Basically, that was just Francine and
11 I in the discussion at the meeting.

12 Q Did they discuss -- did they express it to
13 you that they felt the same way that you did?

14 A Yes, they did.

15 Q When did they do that?

16 A The morning when we got this, when we sat
17 down and reviewed it, we talked about it together.

18 Q What were the specific contents of those
19 discussions?

20 A Just the same thing, the concern of the
21 slant that it was coming from.

22 Q Do you recall any specific comments they

1 made with regard to the slant, characterizations
2 made?

3 A No, I don't.

4 Q Thank you.

5 I'll show you a document which bears the
6 Bates stamp 929. It's another E-mail, interoffice
7 memorandum, dated 11 July 1994 from Francine Kerner
8 to you again, and cc'd Raisa Cesario. I'm trying to
9 pronounce the first name properly. I don't know if
10 I'm being successful.

11 A You can say ROC. Because of Raisa
12 Otero-Cesario, we just call her ROC. That makes it
13 easier for everyone.

14 Q Have you seen this document before?

15 A Yes, I have.

16 Q When did you first see it?

17 A Probably July 11. It was an E-mail from
18 Francine to me.

19 Q Was this E-mail in response to the E-mail
20 that you sent Ms. Kerner with regard to your concerns
21 of her contacting investigators?

22 A No, I think there was a subsequent E-mail

1 that I had sent her that this was in response to.

2 Q The last line or two lines of the E-mail
3 says "As for transcripts, I'll come up to ICC."

4 What does that refer to?

5 A That's where I -- that's where my office
6 is, the ICC building, so instead of us having to --
7 she wanted the transcripts, and I told her, I have to
8 wait until I can get someone to bring them up there.
9 So her comment was that she would come over to our
10 building to pick up the transcripts.

11 Q How often did she come over to pick up the
12 transcripts or send someone over to pick them up?

13 A I don't really remember. I would say
14 probably once or twice.

15 Q Generally someone from your office
16 delivered them over to her?

17 A Generally, yes.

18 Q I would like to show you Exhibit 1177.
19 Again, it's a one-page E-mail, interoffice
20 memorandum, dated 11 July 1994. The time is 10:44
21 p.m. It's from Francine Kerner again to you, cc ROC,
22 which is Raisa Cesario, and subject is Steiner

1 questions. It says "Here are my Steiner questions.
2 They include references to Steiner diary."

3 Do you recall receiving this E-mail?

4 A Yes.

5 Q When did you receive this one?

6 A I'm sure the morning of the 12th, July
7 12th.

8 Q Does this refresh your recollection that
9 Ms. Kerner prepared questions for Mr. Steiner?

10 A Yes, I'm sure she did.

11 Q Do you know if those questions were used by
12 the investigators?

13 A They were passed on to the investigators.
14 Whether the actual questions were used or not I don't
15 know.

16 Q Were they passed on to the investigators
17 before they conducted the interview of Mr. Steiner?

18 A Yes.

19 Q When was Mr. Steiner's interview?

20 A I couldn't tell you the date.

21 Q Do you know if it was the morning of July
22 12?

1 A Probably.

2 Q The E-mail was sent at 10:44 p.m., or at
3 least that's the time noted on the top right-hand
4 portion of the E-mail.

5 A That's correct.

6 Q Does that time denote when the E-mail was
7 sent or received?

8 A When it was sent.

9 Q Do you know whether -- let me rephrase the
10 question.

11 Did Ms. Kerner meet with Mr. Steiner's
12 attorney, Reed Weingarten, on the evening of July 11,
13 1994?

14 A I don't know if she ever met with him. I
15 know there were some discussions about the diary.
16 Exactly when they met, I don't know, but there was
17 discussions about access to the diary.

18 Q And when we were talking about the diary,
19 what diary are you referring to?

20 A Josh Steiner kept a diary, and probably
21 when the independent counsel investigation started,
22 the diary was given to his attorney, who had it

1 locked up over there.

2 Q What's the name of the attorney?

3 A Reed Weingarten. And when we interviewed
4 Mr. Steiner, he had copies of certain pages from the
5 diary that he said were applicable. Later after the
6 interview, I think Daniel O'Rourke did it, went over
7 it Mr. Weingarten's office to compare what they had
8 given us to the actual diary to make sure that it
9 matched the entries, and Mr. Weingarten got the diary
10 out of the safe and the agent was able to compare
11 that they were the same; what we had been given did
12 match what was actually in the diary.

13 Q Had you been provided pages of the diary
14 previous to the interview?

15 A You know, I really don't recall. If we
16 did, I don't know if we got them at the interview or
17 if we got them the day before; I'm just not sure.

18 Q Would there have been any reason for
19 Ms. Kerner to meet with Mr. Weingarten the night
20 before Mr. Steiner's interview?

21 A Only if there was negotiation about whether
22 we were going to get the diary or not, access to the

1 diary or not.

2 Q Were negotiations still going on at that
3 point?

4 A Probably. Well, I don't know. I mean, I
5 really don't know. I think that was something that
6 we had the interview set up, but then the attorney
7 called and said he had a question about the diary,
8 whether the diary should be brought or whatever. And
9 Francine was delegated to handle that, so that's the
10 best answer I can give you.

11 Q Did she tell you the morning of the
12 interview that she had had conversations with
13 Mr. Steiner's attorney?

14 A We knew that they were negotiating because
15 when we set up the interview, that concern had been
16 expressed by Mr. Weingarten, but the best I recall,
17 when we went to the interview, we really didn't know
18 how it had been resolved until we got to the
19 interview, and then he told us this was the deal, the
20 arrangement that he had made with Francine Kerner.

21 Q Which was to provide a portion of the diary
22 that they felt was relevant to the inquiry?

1 A That's correct, that's correct.

2 Q Were any of the witnesses ever provided --
3 the witnesses that were interviewed during the course
4 of your investigation, were any of them provided --
5 given advance copies of questions that were asked
6 during the interviews?

7 A Not to the best of my knowledge. They
8 certainly weren't given them by us.

9 Q Turning your attention again to 1177, it
10 says "Here are my Steiner questions. They include
11 references to Steiner diary."

12 What does that refer to?

13 A The questions that she sent to us had
14 questions about the diary.

15 Q Would that indicate to you that she was in
16 possession of at least portions of the diary on the
17 11th or -- this is if you know.

18 A No, I don't know.

19 Q And again, with all my questions, I'm not
20 going to ask you to speculate.

21 I would like to show you a document which
22 contains more than one E-mail message with Bates

1 stamp numbers 357, 358 and 359. Take a moment to
2 review that and let me know when you're finished with
3 your review.

4 (Witness reviewed the document.)

5 I'm going to direct your attention to the
6 second E-mail.

7 A Okay.

8 Q Have you seen the E-mails contained in the
9 document I just handed you?

10 A Yes, I have. I've seen the second page. I
11 don't think I ever saw the first.

12 Q The second page is a copy of an E-mail
13 interoffice memorandum dated 13 July 1994 at 6:29
14 from Francine Kerner to James Cottos, cc Raisa
15 Cesario. What does that E-mail refer to?

16 A It refers to a conversation that Francine
17 had with Jane Sherburne of the White House staff.

18 Q And I wanted to direct your attention --
19 well, could you give a general review of what the
20 subject of the E-mail was?

21 A Francine was coordinating the appointments,
22 the time for the interviews of the White House

1 people, with Jane Sherburne, and there was a concern,
2 Mark Gearan, if I remember correctly, had been
3 changed several times. And the last time, evidently,
4 was set up and then it got changed.

5 And Fred Coco, one of my investigators, had
6 called back to verify the time, and that's when she
7 said Saturday, 10:00 a.m. Saturday morning. Fred
8 said, I guess we won't be doing Gearan. I think
9 there was somebody else scheduled at that time. Fred
10 got a little testy. And I can -- I remember it very
11 clearly, because there had been a lot of shifting
12 with the White House interviews, and some of this --
13 initially a lot of the people were in Europe with the
14 President, so we couldn't start the interviews when
15 we wanted because they simply weren't in the country,
16 but obviously working at the White House, it's a
17 little difficult to schedule.

18 Fred was very anxious to have a solid time
19 and it kept getting changed and that's basically what
20 this is, concern that -- Francine was saying that
21 Jane Sherburne was concerned that Fred's testiness
22 was reflected in the interviews, and Francine assured

1 her that it was not. And I think that's the reason
2 that it was given to Bob Cesca and that it was given
3 to me, that she was concerned about whether that in
4 fact was happening. And my response to her was, if
5 you read the transcripts, I don't think you will see
6 any testiness.

7 I think that, as I said, all four of the
8 investigators were extremely professional. I never
9 got any complaints from any of the attorneys, and
10 believe me, there were a lot of attorneys present at
11 these interviews. No one complained about any of the
12 investigators, and that's one of the things I'm most
13 proud of from this investigation.

14 Q With regard to the comment you just
15 mentioned, "She is worried that Fred's testiness is
16 reflected in the interviews and I assured her it was
17 not," did Ms. Sherburne ever comment any other time
18 with regard to the tone of the interviews?

19 A Not to me.

20 Q Did she to Ms. Kerner?

21 A Not to my knowledge. This is the only --
22 this is the only item that came up that I'm aware of.

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1 Q It says here "She is worried that Fred's
2 testiness is reflected in the interviews." How would
3 Ms. Sherburne have any knowledge of whether the
4 testiness would be reflected in the interviews?

5 A If the witnesses -- you know, we had
6 absolutely no control over what the witnesses did
7 after the interview, so if a witness -- if we
8 interviewed a White House witness and they went back
9 and reported to Jane Sherburne what they were asked
10 and the nature of the questions, we had no control
11 over that, so I assume that would be where she would
12 get some feedback.

13 Q To your knowledge, on July 13, '94, did the
14 White House have any access to the transcripts at
15 that point?

16 A Not to my knowledge.

17 Q Did Ms. Sherburne attend any of the
18 interviews?

19 A No, she did not.

20 Q I'll show you a document which bears the
21 Bates number 364. Again it's another E-mail,
22 interoffice memorandum, date of 14 July '94 from

1 James Cottos to Francine Kerner, cc Raisa Cesario,
2 subject is Fred Coco's conversation with Jane
3 Sherburne.

4 Have you seen this document before?

5 A I'm sure I have.

6 Q I would like to direct -- did you write
7 this document?

8 A Yes, I did.

9 Q I would like to direct your attention to
10 the second sentence in the text, which reads "The
11 response of the White House people, three attorneys
12 with Cliff Sloan last night, is not very
13 productive."

14 What does that refer to?

15 A I don't recall.

16 Q Take a moment to look at the document and
17 let me know if it refreshes your recollection.

18 (Witness reviewed the document.)

19 A I'm not sure what the comment about "is not
20 very productive" is. Reading the rest of it, I know
21 I remember the conversation about the tight
22 scheduling and the comment about having to know ahead

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1 of time when and who we were going to interview so
2 that we could line up the court reporters.

3 That was one of the other concerns. Having
4 the agents available was not a problem. Making sure
5 that we had court reporters there was a problem. And
6 we were concerned about overlapping interviews.
7 That's the rest of it. But I really don't know what
8 that -- what is referred to, "is not very
9 productive."

10 Q Was Cliff Sloan interviewed at night or
11 during the day?

12 A At night.

13 Q Does that refer to his actual interview?

14 A No, because I think that everyone
15 interviewed cooperated, Treasury people, RTC people
16 and the White House people. There was not anything
17 that came back about people not cooperating.

18 Q Do you recall whether there were any
19 negotiations with regard to what questions would be
20 asked during the interviews?

21 A I think some of the attorneys --

22 MR. PORTNOY: Negotiations?

1 MR. O'CALLAGHAN: Yes:

2 THE WITNESS: Well, I think there were some
3 discussions with some of the attorneys for several of
4 the witnesses about are there any areas that are off
5 limits, et cetera. And I believe in some of the
6 interviews, and I don't recall specifically, but I
7 think it was more White House interviews, that when a
8 question was asked that -- and this was very few
9 times, I don't want to depict it as often, probably
10 three or four times, the attorney said Francine
11 Kerner assured me that that area was not going to be
12 discussed, and the investigators were upset that --
13 about some kind of deals being made without them
14 being included. And they would call me and say, are
15 you aware of any deal, and I would say no.

16 So that's -- if that's -- that's the only
17 thing that I can answer about that.

18 BY MR. O'CALLAGHAN:

19 Q Did you ever learn of specific areas that
20 attorneys identified that Ms. Kerner agreed would not
21 be discussed?

22 A No, I don't recall what the specific areas

1 were. I think it was more in line of what the White
2 House did with the information, I believe, was the
3 concern.

4 Q I'm sorry, can I ask you to be more
5 specific?

6 A Okay.

7 Q More dealing with what the White House did
8 with the information. Are you referring to
9 information --

10 A The Madison Guaranty information. That was
11 not the nature of our investigation. Our
12 investigation was the contacts between the White
13 House and Treasury people and what information was
14 given. To go beyond about what they did with that
15 information, that really was not what we were looking
16 at, and I think that's the area that I think was of
17 some concern.

18 Q When you were looking at the contacts
19 between the White House and Treasury, were you
20 looking just at physical contacts or were you looking
21 for proper or improper contacts?

22 A We were looking at all contacts between

1 Treasury and White House of things that should not
2 have been communicated.

3 Q And how did you make the determination of
4 whether the contacts involved things that should not
5 have been communicated?

6 A Well, I think any contacts regarding
7 Whitewater is what we were asked to document, not to
8 make a decision. That was OGE's job, to make a
9 decision whether the actions were proper or not. Our
10 job was to find out, identify as many contacts as
11 possible and to find out what information was
12 exchanged in those contacts, and then it was up to
13 OGE to decide whether that was an ethical problem or
14 not. We weren't judges on this thing. We were
15 strictly the factfinders.

16 Q With regard to factfinding for the OGE to
17 enable them to make a determination whether the
18 contacts were proper or not, did they ask you to look
19 at what the purpose of the contacts were with regard
20 to information?

21 A Excuse me. Yes, I think that was covered.

22 Q Would that have been covered by information

1 that may have been given -- contacts between the
2 Treasury and White House and then what was done with
3 the information after the initial contact?

4 A I think our job was to look at what
5 information was given to the White House. That's
6 what our responsibility was, to determine what
7 information was relayed to the White House, not what
8 subsequently happened to that information.

9 Q But what subsequently happened to that
10 information, would that have borne upon whether or
11 not the contacts were proper or not?

12 A No, I think the whole question was whether
13 that information should have been relayed or not.
14 Whether that information was used or not was
15 irrelevant to the contact being appropriate or not.

16 Q Did anyone at the RTC ever express any
17 opinion as to whether the investigation should have
18 included contacts that occurred after the first
19 contact at the White House?

20 A I think there was some concern about that,
21 yes.

22 Q And what concern was expressed?

1 A Well, I think Clark Blight and I had
2 discussed that because there were some questions
3 asked early on that the investigators disagreed, you
4 know --

5 Q Treasury and RTC investigators?

6 A The Treasury and RTC investigators
7 disagreed. My investigators felt that based on our
8 conversations, that that was not an area that we were
9 going into, and RTC wanted to ask questions in that
10 area. There was only two areas that we disagreed.
11 That was one, and the other one was RTC wanted to ask
12 the Treasury people a lot more about their
13 involvement in running RTC.

14 Well, Roger Altman was the acting director,
15 and we felt that that was inappropriate because that
16 was not what we were looking at. You know, the fact
17 of other people -- other Treasury employees being
18 involved in RTC business was not what this
19 investigation was about, so there was some
20 discussions about that. Those are the only two areas
21 that we had discussions or disagreements, I guess,
22 with RTC IG.

1 Q Did they articulate why they thought it was
2 appropriate to ask about what was done with the
3 information after the initial contact with the White
4 House?

5 A I don't recall specifically. I think my
6 sense was, and when I told -- my discussion with
7 Clark Blight was we know that the investigations went
8 forward, the investigation of Whitewater Madison
9 Guaranty was not stopped, therefore, it would have
10 been very, very relevant if the investigation had
11 stopped, but it didn't. It obviously has gone
12 forward and is continuing to go forward.

13 So since the investigation went forward,
14 none of these contacts resulted in the cessation of
15 that investigation; therefore, I felt that there was
16 no reason to pursue that.

17 Q Did you ever consider whether looking at
18 who the -- whoever was contacted told, whether that
19 went forward revealing the propriety of the contact
20 and how that information was used? ^ CK SENTENCE?

21 MR. PORTNOY: Mike, I'm going to ask you
22 how this relates to the propriety of any release of

1 information or the subject of our resolution. You're
2 now inquiring rather deeply into a subject that's
3 really well to the side.

4 MR. O'CALLAGHAN: What's your specific
5 objection, Jim?

6 MR. PORTNOY: It's outside the scope of
7 the resolution. It's outside the scope of what we're
8 supposed to be here to discuss. I think Mr. Cottos
9 has answered a number of questions regarding his
10 thinking on this subject, and now we're pretty far
11 afield.

12 BY MR. O'CALLAGHAN:

13 Q I would just like to show you a three-page
14 document with an E-mail dated July 11, 1994. Most of
15 the Bates are hard to decipher, but the first one is
16 a 9. I believe it's a series of numbers, three
17 pages. It's from James Cottos to Francine Kerner, cc
18 Raisa Cesario, and it's subject: Altman/Hanson
19 questions.

20 Have you seen this document before?

21 A Yes, I created this document.

22 Q And what does it refer to, the subject?

1 A The subject is the Altman/Hanson questions
2 that Francine had faxed to me over a weekend, and I
3 believe I received them Monday morning.

4 Q Were these questions questions that were
5 suggested to be used in interviews?

6 A Yes, they were.

7 Q And were these questions used in any of the
8 interviews?

9 A They were passed on to the investigators.
10 Whether they were used or not, I can't specifically
11 say.

12 Q Did they ever -- the investigators ever
13 relate to you whether they ever used these suggested
14 questions?

15 A No.

16 Q I would like to direct your attention to
17 the third page. The first -- second full sentence
18 there reads "RTC has a different agenda. I'm
19 struggling to keep the interviews on track. I've
20 been in constant contact with Clark Blight trying to
21 limit what his people want to ask. He has not gotten
22 any briefing from me either because, again, I have no

1 information to do that. He's gone this week, so
2 maybe we will eliminate some areas that they want to
3 pursue."

4 Does that refer to the differences you're
5 having with the RTC people?

6 A That's correct, what I just mentioned, the
7 fact of the RTC investigators wanting to get more
8 into the role that the Treasury people were playing
9 in running RTC, and I -- again, that's what Clark and
10 I talked a lot about, that I didn't feel that was
11 what this was all about.

12 Q The last sentence, or last two sentences,
13 "As soon as the transcripts come in on Dennis
14 Foreman, I'll have them brought up to you. Until
15 then, we'll keep plugging ahead."

16 What does that refer to?

17 A Just what it says, that she had asked for
18 the transcript on the Dennis Foreman interview, and I
19 said as soon as they were in, I would send them up.

20 Q Did Ms. Kerner relay to the -- what use she
21 was putting the transcripts to once she received
22 them?

1 A No, I don't know what she did with the
2 transcripts once she received them.

3 Q Why was she provided with a copy of the
4 transcripts after they came in?

5 A Because Bob Cesca told me that she needed a
6 copy to review and advise and to share with the
7 attorneys. She was the coordinator with the
8 attorneys for each of the witnesses for any changes
9 that needed to be made.

10 Q I'm showing you a document Bates stamped
11 366. It's a one-page E-mail interoffice memorandum,
12 18 July 1994 from Francine Kerner and department's
13 counsel to James Cottos, cc Raisa Cesario and Robert
14 Cesca. The subject is delivery of transcripts.

15 Have you seen this document before?

16 A Yes, I have.

17 Q And when did you see it?

18 A Probably on 19 July.

19 Q And why do you say you thought you received
20 it on the 19th?

21 A It's dated the 18th of July at 6:24 p.m.,
22 so I probably saw it the following morning.

1 Q And what does this document concern?

2 A It talks about the release of the
3 transcripts to Ken Smallsbach.

4 Q What was your reaction to this -- actually,
5 rather, were the transcripts delivered to Ken
6 Smallsbach on the 18th?

7 A I don't have a clue. There was a
8 discussion as referred to in the first sentence, "In
9 accordance with our discussion earlier today," and
10 that was a discussion between Francine Kerner, Bob
11 Cesca and I about the transcripts being given to the
12 Secretary, and I again voiced my objection and I was
13 overruled and the transcripts were given
14 subsequently, I believe, by Francine to Ken
15 Smallsbach. Again, I didn't give the transcripts to
16 anyone, so I assume that she did that day.

17 Q How long was the discussion that occurred
18 that day regarding handing over the transcripts?

19 A I don't think it was a very long
20 discussion. I think that she made her position and I
21 made my position, which had been consistent
22 throughout this whole investigation, and Bob Cesca

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1 made the decision.

2 Q Did he give a reason why he agreed to have
3 the transcripts handed over?

4 A He felt that with the agreement that was
5 reached about it not being shared with anyone, that
6 the Secretary needed to be prepared for his
7 testimony, and therefore, the transcripts would be
8 given.

9 Q Did Ms. Kerner ever relate to you or
10 Mr. Cesca that the Secretary had requested that the
11 transcripts be handed over to Mr. Smallsbach or
12 anyone in the general counsel's office?

13 A Well, I think that was understood from the
14 start, that that's what the Office of General Counsel
15 needed them for, was to prepare the Secretary for his
16 testimony.

17 Q But was it ever identified who made the
18 request for the transcripts and felt that they were
19 needed for preparation of testimony?

20 A No, I don't recall anyone saying Secretary
21 Bentsen wants them, no, I don't recall that.

22 Q Or anyone else in the Department of

1 Treasury?

2 A No, I can't identify anyone in particular.

3 Q And what was your reaction to this E-mail?

4 A I wasn't a real happy camper, because
5 again, I did not want any of the transcripts released
6 until we were completely done and had written the
7 report.

8 Q At this point what was your understanding
9 of the agreement reached between Ms. Kerner and
10 Mr. Smallsbach?

11 A Well, as it says in the second paragraph,
12 that the Secretary would not allow the transcripts to
13 be shared among employees until the banking committee
14 completed its depositions.

15 Q Did you have concerns with regard to that
16 transcripts would be shared with witnesses that you
17 had interviewed?

18 A Yes, I did.

19 Q What were your specific concerns?

20 A My concern was that we had done most of the
21 Treasury employees but they were still testifying
22 either in front of the House committee or the Senate

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1 committee, and I was concerned about whether those
2 transcripts would be given to them to help them
3 prepare for their testimony in front of the
4 committees.

5 Q Did you think it was improper for them to
6 be provided with transcripts to prepare for the
7 Congressional testimony?

8 A I think I have stated my position. I
9 didn't feel those transcripts should be shared.

10 Q Did you ever object in writing -- actually,
11 I would like to show you an E-mail Bates stamped 367
12 dated 19 July 1994 from James Cottos to Francine
13 Kerner, cc Raisa Cesario, subject White House
14 transcripts.

15 Have you seen this document before?

16 A Yes, I have. I created it.

17 Q What does this document refer to?

18 A This is the discussion -- Francine had sent
19 me an E-mail stating that the White House wanted the
20 transcripts to be able to compare, I think, the -- I
21 don't remember the exact wording, but it was to
22 compare our transcripts to their notes to see if

1 there were any inconsistencies. And in this E-mail,
2 I was telling her that I thought it was backwards
3 because I couldn't understand how you could compare
4 interviews that they did orally with no written
5 documentation, compare those with our sworn
6 depositions. I didn't think that was much of a
7 comparison.

8 Q What was your understanding for what
9 purposes they would compare? Why were they looking
10 to compare the transcripts with their notes?

11 A I think they were preparing for testimony,
12 because I believe Mr. Cutler was testifying a week
13 later, so that was the same theory that came later
14 about the release of the transcripts, was that they
15 needed them to make sure that Mr. Cutler's testimony
16 was accurate.

17 Q And the last line says "She was much too
18 late to point out inconsistencies at that time."

19 What does that mean?

20 A Well, I think supposedly she was
21 interviewing their people about the same time that we
22 were. Francine had told me that Jane Sherburne was

1 acting as an investigator for the White House, so at
2 this point, to me, it was much too late. We were
3 almost done, ready to write the report, and for her
4 to come forward now and say something is different, I
5 thought she was a little late.

6 Q I would like to show you a document Bates
7 stamped 365, which I believe is another E-mail dated
8 the day before, July 18.

9 A This is one that precipitated my response,
10 which we just talked about.

11 Q Okay. But you received that on the 18th;
12 is that right?

13 A That's correct. Well, probably the morning
14 of the 19th.

15 Q But it was sent on the 18th?

16 A That's correct.

17 Q And that was the same day that the
18 transcripts were released to the Office of General
19 Counsel?

20 A I'm not sure.

21 Q I would refresh your recollection with the
22 exhibit I showed you previously, 366.

1 A Yes, that was the same date.

2 Q Did you find it odd that you had a request
3 from the White House the same day that the -- for the
4 transcripts the same day that the transcripts were
5 handed over to the Office of General Counsel?

6 A I can't comment on that. I really don't
7 know, and I don't know if I made the connection at
8 the time. I just -- I objected to Jane Sherburne
9 asking for our transcripts to compare with their
10 interviews. I just didn't feel that was
11 appropriate.

12 I didn't know if -- they weren't under
13 oath, as far as I knew. There were no -- I never
14 heard of doing interviews without any written
15 documentation. Therefore, I objected to that whole
16 business about comparison purposes. But no, I don't
17 find any particular significance between that and
18 being turned over.

19 Q Okay. Thank you.

20 I'm showing you a document Bates stamped
21 011803. One-page document, handwritten notes on it.
22 It's kind of tough to decipher the top line.

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1 Have you ever seen this document before?

2 A No, I haven't.

3 Q Do you recognize the handwriting on this
4 document?

5 A No, I don't.

6 Q Do you recognize the signature or the
7 initial?

8 A No, I don't, to tell you the truth.

9 MR. O'CALLAGHAN: Off the record a moment.
10 (Discussion off the record.)

11 (Whereupon, at 12:42 p.m., the deposition
12 was recessed, to be reconvened at 1:45 p.m. this same
13 day.)
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AFTERNOON SESSION (1:52 p.m.)

Whereupon,

JAMES M. COTTOS

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

MR. O'CALLAGHAN: We are back on the record.

EXAMINATION (Continued)

BY MR. O'CALLAGHAN:

Q Mr. Cottos, with regard to the chronology report that Treasury IG's and Resolution Trust Corporation Inspector General's Office had prepared for the OGE, which is the Office of Government Ethics, were any of the edits that Ms. Kerner made to the drafts incorporated in the final report?

A I really couldn't answer that, because, as I said earlier, there was a large group that was involved in writing the final report. And I think everyone had input into it, so I couldn't say that any one person had all input or no input, or anything else, because it was a group product.

MR. O'CALLAGHAN: Off the record.

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(Discussion off the record.)

MR. O'CALLAGHAN: Back on the record.

BY MR. O'CALLAGHAN:

Q Mr. Cottos, during the period March through the end of June, 1994, did RTC IG or Treasury IG engage in any document collection or preinvestigation activities?

A Between March and June?

Q Before you got the formal go-ahead to go ahead with the investigation, after Mr. Fiske gave you the go-ahead.

A Not that I recall.

Q Other than the general prep meetings that you've testified to already?

A That's correct, but as far as gathering documents, no. We were waiting for the Treasury documents and the White House documents.

Q I would like to have you take a look at a document Bates stamped 6877. It's a one-page document on Department of Treasury letterhead, dated July 23, 1994. "By hand" is the transmittal instruction, addressed to Jane Sherbourne, Esquire,

1 and it is signed by Stephen J. McHale, assistant
2 deputy counsel. Have you seen this document before?

3 A Yes, I have.

4 Q When did you first see it?

5 A Probably Monday, July the 25th, 1994.

6 Q And how was it brought to your attention?

7 A At a meeting with Francine Kerner and Bob
8 Cesca.

9 Q What was the purpose for the meeting?

10 A The purpose of the meeting was for them to
11 tell me that the transcripts had been turned over on
12 Saturday; that was a Monday, and they told me at that
13 time that the transcripts had been turned over
14 Saturday.

15 Q What was your reaction?

16 A I was not very happy about it.

17 Q What did you say to them in reply to them
18 informing you that the transcripts had been turned
19 over on the 23rd?

20 A I asked why I hadn't been consulted since I
21 was in charge of the investigation.

22 Q What was the response you received from

1 them?

2 A Bob basically said that he had been
3 contacted on Saturday, and that he had made the
4 decision to turn them on over, and therefore didn't
5 feel he needed to discuss it with me.

6 Q Did you say anything in reply to that?

7 A There wasn't a lot I could say.

8 Q Did you express to him that he should have
9 consulted with you before --

10 A I said I wished he would have called me to
11 discuss it.

12 Q Did you explain to him why you wished he
13 had called you to discuss it?

14 A Well, at that point, no. We had discussed
15 this. This had been an ongoing discussion about
16 release of the transcripts, and as I said earlier, I
17 was very consistent in my thoughts about the
18 transcripts, so we didn't go into the whole thing at
19 that point, no.

20 Q With regard to the ongoing discussion, the
21 discussion you are referring to for release of the
22 transcript to the White House or release of the

1 transcripts in general?

2 A Release of the transcripts in general, to
3 anyone, whether it be the White House, the Secretary,
4 anyone else.

5 Q Did you ever commit in writing your
6 objection to release of the transcripts to the White
7 House or to anyone else?

8 A In writing? No I don't believe I did.

9 Q If you could keep 6877 in front of you.
10 Okay. What is Exhibit 6877?

11 A That's a letter from Stephen McHale to Jane
12 Sherbourne.

13 Q And what does it discuss?

14 A It discusses the transmission of the
15 transcripts from the investigation from Treasury to
16 the White House.

17 Q Had you ever read any reports or heard of
18 any reports that you had objected in writing to
19 release of the transcripts on July 19, 1994?

20 A There were a lot of articles written at
21 that time. I don't remember if there was anything
22 that said that or not.

1 Q I would like to show you Exhibit 1953. And
2 I would like to direct your attention to the one,
3 two, three, four -- fourth paragraph of that -- of
4 the document. For the record, it is a one-page
5 document, fax line of May 8, 1995, and it's titled
6 "Starr investigates behind scene maneuvering during
7 ethics probe."

8 And the paragraph I just pointed out to
9 you --

10 MR. PORTNOY: Could you identify the source
11 on the record.

12 BY MR. O'CALLAGHAN:

13 Q It's an AP story, Associated Press story.
14 The paragraph I pointed out to you reads
15 "Presidential aides made at least four attempts to
16 obtain witness depositions before the probe ended."

17 Are you aware four attempts were made to
18 obtain witness depositions --

19 A I don't know that there was four. I think
20 we talked this morning about some of the E-mails back
21 and forth, the discussions between Jane Sherbourne
22 and Francine Kerner, which Francine relayed to me,

1 about requests from the White House for the
2 transcripts. I don't know that there were four.

3 Q Other than the request that we've already
4 discussed today, are you aware of any additional
5 requests that were made?

6 A No, I am not.

7 Q And then there is a -- the next sentence
8 attributes action to you. It says "the chief
9 Treasury investigator, Jim Cottos, who objected in
10 writing to releasing the transcripts on July 19, 1994
11 just four days before they were released."

12 Does that help refresh your recollection as
13 to whether you --

14 A Well, that was an E-mail that we talked
15 about this morning. That was an E-mail from me to
16 Francine that we discussed earlier, where Jane
17 Sherbourne had asked for the transcripts and I said
18 that was nice of her to offer but I don't think so.
19 That's what they are referring to.

20 Q That's your understanding?

21 A That's my understanding because that's the
22 only place I know anything was in writing.

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1 Q I would like to direct your attention again
2 to a document Bates number 6877 which is a July 23,
3 1994 letter from Steve McHale to Jane Sherbourne.
4 Were you ever aware of any agreement that was entered
5 into between the Department of Treasury and the White
6 House with regard to the handling of transcripts
7 after they were delivered?

8 A Just what was stated in this letter.

9 MR. PORTNOY: At what time?

10 MR. O'CALLAGHAN: At any time. That's why
11 I said ever.

12 THE WITNESS: The only agreement I know is
13 what's stated in this letter.

14 BY MR. O'CALLAGHAN:

15 Q And when did you become aware of the
16 agreements?

17 A On July 25th.

18 Q So you were not approached about setting up
19 an agreement of this nature?

20 A No, I was not.

21 Q Have you ever learned that Secretary
22 Bentsen and Lloyd Cutler had ever entered an

1 agreement before July 23 that Treasury and RTC
2 transcripts would be turned over to the White House?

3 A No.

4 Q What were your concerns about the
5 transcripts being handed over to the White House on
6 the 23rd?

7 A Because the White House had several people
8 that were going to testify, both in front of the
9 House committee and the Senate committee, and again,
10 I was concerned about how they would be used to
11 influence any testimony of other witnesses.

12 Q Had you expressed that concern to Mr. Cesca
13 before the 23rd?

14 A Yes, I did.

15 Q Did he respond to you, to that specific
16 point?

17 A We had discussed it, and he had agreed not
18 to release them to the White House prior to the
19 23rd. I think you referred to the E-mail on July
20 19th; as far as I know, he supported it at that time,
21 because they were not turned over when Jane
22 Sherbourne requested them on the 18th.

1 Q Did Mr. Cesca give you his reasoning on the
2 25th for turning over the transcripts?

3 A Yes.

4 Q And what did he tell you?

5 A Basically he said that since they had
6 reached this agreement that they would only be used
7 to prepare Mr. Cutler for his testimony, and would
8 not be shared with any other witnesses, that he felt
9 it was appropriate to release them.

10 Q Was that a satisfactory agreement to you,
11 with regard to safeguarding the transcripts?

12 A I have been very consistent. I did not
13 feel they should be released until the investigation
14 was done and the report was written.

15 Q I would like to have you look at an exhibit
16 which bears Bates stamps 462 through 464. Have you
17 seen this exhibit before?

18 A Yes, that's my writing. Yes, I prepared
19 this document.

20 Q When did you prepare it?

21 A I believe it is dated August 24th, 94.

22 Q Thank you. I believe the copy we had had

1 the date chopped off.

2 A I think it is 8/24/94.

3 Q I have one question on this document. The
4 first page, about three-quarters of the way down,
5 there is a bullet or a slash and it reads "should we
6 close our Whitewater case." Can you locate that in
7 the document?

8 A Yes.

9 Q And then there is a slash and it says, "yes
10 question mark." What does that refer to?

11 A Well, that was my response. It was brought
12 up at the staff meeting, should it be closed, and I
13 wrote yes, but then it had to be discussed because
14 obviously that wasn't my decision.

15 Q Was the case still open on August 24, 1994?

16 A The report had been written. I have to
17 explain, I guess, our process on cases. If we do an
18 investigation of someone, and we issue the report, if
19 it's a Customs employee, for instance, we prepare the
20 report, and we send it to Customs. That report is
21 considered -- that case is considered open until we
22 get the report back from Customs, with any action

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1 that they decided to take. So, if they send us back
2 the report and say thank you for the report, we've
3 decided to take no action, or we've decided to
4 suspend the person for several days, or we have
5 terminated this person or whatever, our case is open
6 in our files until we get that report back, so that's
7 the normal process.

8 This obviously was not a normal type of
9 thing, so the question was, is it open, or is it
10 not? Should we consider it closed, with the OGE
11 opinion, or should we wait to see if the Secretary
12 was going to take any action based on the report.
13 That's what the discussion was.

14 Q And what was the determination?

15 A The determination was that we could go
16 ahead and close it, that no additional action was
17 going to be taken.

18 Q And when was it considered to be closed;
19 what action precipitated that?

20 A Well, I think it was just -- kept in our
21 files, I mean it is still in our files and the
22 documents are still retained in our files.

1 Q When was the investigation finished?

2 A Well, the report was issued on July 29, so
3 technically we were done then.

4 Q Okay. Thank you.

5 I am showing you a document which bears
6 Bates stamps 02479 through 02482. Take a moment to
7 review that and tell me when you have had a chance to
8 look at it.

9 A Okay.

10 Q Have you seen this document before?

11 A Well, that's my writing on the front, so,
12 yes. I did the -- I wrote on the cover sheet.

13 Q And for the record I will identify it. It
14 is a multipage document, fax cover sheet, Treasury
15 Department shield on it, Department of the Treasury,
16 Office of Inspector General, office of
17 investigations. The fax line reads July 25, 1994,
18 Monday, 12:56, and the date is -- on the cover sheet
19 7/25/94 to Clark Blight from Jim Cottos. And then
20 the note in the comment/special instructions" section
21 reads "questions and suggested changes to our report
22 by the Secretary's 'review team' to be discussed

1 tomorrow."

2 What is the -- what's the reference to the
3 Secretary's review team; what does that refer to?

4 A It refers to Francine Kerner.

5 Q And that's it?

6 A Yes. These were comments that she had sent
7 over to me, and I was sending them over to Clark.

8 Q Okay, and why was she referred to as the
9 Secretary's review team?

10 A Because I felt she was expressing the
11 department's position.

12 Q So is this comment meant to convey a
13 certain level of sarcasm?

14 A Yes.

15 Q Are these comments that you forwarded to
16 Mr. Blight different than the comments that were
17 looked at earlier?

18 A Yes, they are.

19 Q How many additional -- how many different
20 sets of edits or comments did Ms. Kerner provide you
21 with?

22 A I would guess four or five.

1 Q Did she have any assistance in making
2 comments or editing on the drafts of the report?

3 A Not to my knowledge.

4 Q Did she share her comments or edits with
5 anyone outside of the Office of Inspector General?

6 A Not to my knowledge.

7 Q Was the draft of the report reviewed by
8 anyone outside of the Inspector General's Office?
9 That's the question.

10 A Okay. Yes, the draft report was given to
11 the Secretary.

12 Q And when was that given to the Secretary?

13 A On the 22nd of July, and it was given to
14 OGE on the 22nd of July. I had personally carried it
15 over to OGE and Bob Cesca took it up to the
16 Secretary's office, I don't know who he delivered it
17 to, but he took it upstairs.

18 Q Why was a draft of the report brought over
19 to OGE on the 22nd?

20 A That was for them to get an idea of where
21 we were going. It was a draft. And to be able to
22 resolve any questions that they had before we

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1 finalized it, if they had questions in there or saw
2 something that we hadn't addressed, that we could --
3 before we finalized it, we could either insert or do
4 additional interviews or whatever.

5 Q Was the whole purpose of the investigation
6 to provide OGE with some information?

7 A Yes, it was.

8 Q And they were part of the group working
9 with investigation and analysis?

10 A Well, we were working in effect for them,
11 to get the information that they needed to reach a
12 decision.

13 Q And Mr. Cesca brought a draft of the report
14 over to the Secretary's office on July 22nd?

15 A That's correct.

16 Q Who did he bring it over to?

17 A That I don't know. I gave him the copy. I
18 bound them, I physically took it over to Rosslyn to
19 have Jack Adair, the RTC Inspector General, sign. I
20 brought it back, Bob Cesca signed it. And then -- in
21 fact, I had two copies and he took one upstairs and I
22 took the other one to OGE.

1 Q For what purpose was the draft report being
2 provided to the Secretary's office?

3 A I don't know.

4 Q Who made the decision to provide a draft of
5 the -- to provide the draft report to the Secretary's
6 office?

7 A Bob Cesca.

8 Q When was that decision made?

9 A I don't know.

10 Q When did he inform you of the decision?

11 A On the 22nd.

12 Q How did that come about?

13 A Well, he told me that that's why we were
14 preparing the draft, and that he was going to take it
15 upstairs.

16 Q Did you have any objection to that?

17 A I asked the same question, why we were
18 providing a draft, and again I was told, so they
19 could use it to start preparing testimony for the
20 Secretary.

21 Q Was your understanding that -- let me start
22 again. My tongue moves too quickly for me.

1 Was your investigation undertaken to help
2 prepare Treasury officials to testify?

3 A No, it wasn't.

4 Q Did you raise that fact with Mr. Cesca?

5 A I don't recall specifically putting it that
6 way, no.

7 Q Did you put it in a similar way or convey a
8 similar sentiment?

9 A Well, I just simply said that, to me, I
10 thought we were ready to finalize, and I could
11 understand OGE having a copy since they needed it to
12 make their opinion but I didn't understand why the
13 Secretary needed a copy.

14 Q Was the Secretary's office provided with a
15 copy to provide their comments with regard to a
16 draft?

17 A I don't know if that's why they were given
18 a copy or not. I can't answer that. I don't know.

19 Q Were you ever given a further explanation
20 at any other time for why the draft was supplied to
21 the Secretary's office?

22 A No, I was not.

1 Q Was a draft supplied to any other office in
2 the Department of Treasury?

3 A Not to my knowledge.

4 Q Did the Secretary's office provide comments
5 on the draft?

6 A The only comments I got were Francine
7 Kerner's. I don't know where those comments came
8 from, I mean if someone else contributed to those
9 comments, I don't know.

10 Q Those are the comments that we've discussed
11 earlier?

12 A That's correct.

13 Q I would like to show you what has been
14 marked Bates stamp 014895 -- and I believe it is an
15 8. It is a one-page document dated July 29, 1994,
16 memorandum for Kenneth R. Schmalzbach from Peter
17 Rittling, R-i-t-t-l-i-n-g, and the subject is review
18 of the OIG final chronology of White House contacts.

19 I would like to you take a moment to review
20 that and let me know when you have had a chance to --

21 MR. PORTNOY: Could you give the date
22 again?

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1 MR. O'CALLAGHAN: July 29th.

2 THE WITNESS: I never saw this document
3 before.

4 BY MR. O'CALLAGHAN:

5 Q Had you ever heard that review of the final
6 chronology was undertaken by people in
7 Mr. Schmalzbach's office?

8 A No, I did not.

9 Q Would you have permitted that during that
10 time period?

11 A Well, once it was finalized, anybody could
12 review it.

13 Q I would like to --

14 A I don't know who Peter Rittling is.

15 Q I would like to direct your attention to
16 the first line which reads "the OIG incorporated many
17 of our recommended changes into the final
18 chronology." Had you ever been notified that
19 recommended changes had been offered by
20 Mr. Schmalzbach's office?

21 A No, I was not.

22 Q Would you have expected to have been

1 notified on that?

2 A If they had comments, I would expect to be
3 notified of that, yes.

4 Q Can you think -- is there any reason why
5 you wouldn't be notified?

6 MR. PORTNOY: You are asking the witness to
7 speculate on the actions of people he doesn't even
8 know exist.

9 THE WITNESS: I don't know who Peter
10 Rittling is.

11 BY MR. O'CALLAGHAN:

12 Q Okay. During the conduct of your drafting
13 of the report, would you consider it proper for
14 Mr. Schmalzbach's office to be making recommended
15 changes to the chron?

16 A No, I would not.

17 Q Why would you not?

18 A Because it was our report, and it was
19 inappropriate for the office of general counsel for
20 Treasury to be making any recommendations or comments
21 on our report.

22 Q And why is that?

1 A As far as changes in the report? Again
2 because members of that office were covered in the
3 report.

4 Q And specifically?

5 A Specifically Jean Hanson and Dennis
6 Foreman, deputy general counsel.

7 MR. PORTNOY: For the record,
8 F-o-r-e-m-a-n.

9 BY MR. O'CALLAGHAN:

10 Q Did Office of General Counsel ever request
11 to see a copy of the draft report before it was
12 completed?

13 A They never requested it of me.

14 Q Did they ever request to be part of the
15 process of producing a draft chronology?

16 A No, they did not.

17 Q I would like to show you a document Bates
18 stamped -- it is difficult to read -- 9230 and then a
19 93, it is dated 7/26/94, containing handwritten
20 notes. It's a two-page document. Have you seen this
21 document before?

22 A That's my writing, so it is a document that

1 I prepared.

2 Q Did you prepare it on July 26?

3 A Yes, I did.

4 Q There is a note on the beginning of the
5 page which reads -- could you read it for me, the
6 first note?

7 A The first note, "go see Weingarten about
8 the diary. Set time and show up."

9 Q What does that refer to?

10 A That was referring to when we were going to
11 do the verification of the diary that I referred to
12 earlier, that O'Rourke the investigator would go over
13 to Mr. Weingarten's office and look at Josh Steiner's
14 diary to verify that the pages we had been given were
15 the same as contained in the diary.

16 Q Okay, thanks. I just wanted to make sure
17 that was the reference that had been made earlier.

18 I would like you to look at a document
19 Bates stamped 3770. It is a one-page document. It
20 is an interoffice memorandum, an E-mail dated 4
21 October 1994, from James Cottos to Francine Kerner,
22 with a cc to Robert Cesca. The subject is "written

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1 questions from Senator Bond regarding re: Madison."

2 Have you seen this document before?

3 A Yes, I have.

4 Q Did you create this document?

5 A Yes, I did.

6 Q Could you tell me what this reference is?

7 A It references an E-mail that I had received
8 from Francine Kerner with some proposed answers to
9 Senator Bond.

10 Q Second sentence says "I believe we should
11 make the decision since the White House released
12 documents and someone violated our agreement, we
13 should decide when and if the documents should be
14 returned." What does that refer to?

15 A I think the question, and I would have to
16 see her E-mail to see what the proposed -- proposals
17 were --

18 Q I might be able to be of assistance.

19 A Okay.

20 Q I have a document Bates stamped 369, it is
21 a one-page document from Francine Kerner to James
22 Cottos, cc Robert Cesca, dated 3 October '94. Is

1 that the preceding E-mail?

2 A Yes, it is.

3 Q What does that E-mail deal with?

4 A It deals with the same thing, written
5 questions from Senator Bond regarding Madison.

6 Q What does it specifically address?

7 A It specifically addresses -- one of the
8 questions from Senator Bond was whether or not the
9 White House documents that had been given to us had
10 been returned yet. And Francine offered to propose
11 two answers.

12 Q Okay, and document 369, the last paragraph
13 reads "if we choose the second response, we probably
14 should notify the counsel to the president." Do you
15 see that there?

16 A Yes, I do.

17 MR. PORTNOY: Could you read the rest of
18 the sentence into the record just to be --

19 BY MR. O'CALLAGHAN:

20 Q Sure. I am sorry. "(Hopefully, we would
21 get White House concurrence. I believe the decision
22 is ours in any event)."

1 Did you normally -- well, is that a normal
2 procedure?

3 A Nothing is normal about this whole
4 investigation. The response, I agreed with the
5 second one, because I felt that that was our
6 decision, about when those documents would be
7 returned.

8 Q Did she relate to you why she thought if
9 you chose the second response you should probably
10 notify the counsel to the president?

11 A Well, I think because of the initial
12 agreement about when those documents would be
13 returned. The letter -- that was in the agreement
14 when the transcripts were sent to the White House, to
15 Mr. Cutler.

16 Q Okay. Was that the July 23rd --

17 A That's correct.

18 Q -- letter?

19 A Yes.

20 Q I would like to direct your attention to
21 document 3770. And could you more fully describe now
22 how that responds to the earlier E-mail?

1 A Well, I think the -- somewhere in here,
2 either during the course of testimony, or -- and I
3 believe it was during testimony, and I don't know if
4 it was in front of the House Banking Committee or the
5 Senate Banking Committee, Mr. Cutler stated that he
6 had used our transcripts to reconcile any
7 inconsistencies with White House personnel. And I
8 felt that that violated our agreement because, as I
9 understood the agreement, it was only to be used for
10 his testimony, not to reconcile any differences or
11 any inconsistencies in the testimony.

12 That's why I made the comment that since I
13 felt our agreement had been broken by the White
14 House, that we should make the decision about when
15 those documents would be returned and not be bound by
16 whatever was in that agreement.

17 Q And the agreement you are referring to
18 again is the one in the July --

19 A July 23rd letter from Stephen McHale or the
20 Secretary.

21 Q Stephen McHale to Jane Sherbourne?

22 A To Jane Sherbourne, correct.

1 Q Why were the documents transmitted from
2 Steve McHale, who is not part of the -- well, is
3 Steve McHale part of the Inspector General's office?

4 A No, he's not. He is part of the Office of
5 General Counsel for the Treasury Department.

6 Q Why were the transcripts transmitted by us
7 to General Counsel versus the Office of Inspector
8 General?

9 A Because Mr. Cutler asked the Secretary. He
10 didn't ask the Inspector General, he asked the
11 Secretary and the Secretary asked the Inspector
12 General.

13 Q Who in the Inspector General's office
14 transferred the transcripts over to General Counsel's
15 office?

16 A Physically, probably Francine Kerner. Bob
17 Cesca made the decision. Francine Kerner, I think,
18 physically gave them to the general counsel.

19 Q That was previous to the 23rd?

20 A That's correct.

21 Q That was reflected in the July 18th E-mail?

22 A Yes.

1 Q I am showing you a document Bates stamped
2 363. It is an E-mail, it doesn't have a date on it.
3 Phone number is listed on it, 202-622-1090 to James
4 Cottos, cc Robert Cesca, subject, same subject
5 regarding written questions from Senator Bond.

6 It reads "Jim, as we discussed on the
7 phone, I am not aware of any White House violation of
8 the Department's agreement."

9 Have you seen this document before?

10 A Yes, I have.

11 Q When did you see it?

12 A The date it was written probably.

13 Q And was this an E-mail from Francine Kerner
14 to you?

15 A Yes, it was.

16 Q Did you have a reaction to the statement
17 "as we discussed on the phone, I am not aware of any
18 White House violation of the Department's agreement"?

19 A We had talked about it when I wrote in my
20 E-mail, which you referred to a minute ago, that
21 since the White House had somewhat violated our
22 agreement, Francine called me and said she couldn't

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1 understand why I was making that statement, and I
2 explained to her why. And this is her E-mail back
3 saying she wasn't aware that there was any violation
4 of our agreement. That was her opinion.

5 Q Did she disagree with you about whether the
6 White House had violated the agreement?

7 A Yes, she did.

8 Q Do you know if she still disagrees with you
9 about that?

10 A I don't know. We haven't talked about it.

11 Q I would like to show you a document which
12 has a single Bates on it, it's a 7, which I believe
13 is from a longer series. It's a one-page document,
14 memorandum for Secretary Bentsen from Robert Cesca,
15 and the first paragraph reads "thank you for your
16 kind letter of August 4, 1994 for the work we did in
17 support of the Government Ethics review on the White
18 House Treasury contacts relating to Madison Savings &
19 Loan."

20 Have you ever seen this document before?

21 A Yes, I have.

22 Q When did you see that?

1 A Bob Cesca gave me a copy of this document.

2 Q And when did he give it to you?

3 A Whenever it was written, I am sure. I
4 don't know the date that it was written; it is not
5 indicated on here.

6 Q Were you aware that Secretary Bentsen had
7 sent a letter praising the Inspector General's work
8 in support of the Office of Government Ethics'
9 review?

10 A Yes, I was.

11 Q Did you receive a copy of that?

12 A Yes, I did.

13 Q With regard to the subject of this memo,
14 guidance on disclosure of nonpublic information --

15 A Yes.

16 Q -- did the Office of Inspector General ever
17 supply the assistance requested in this memo?

18 A I believe they did because there was a
19 policy that was issued, but I wasn't involved in
20 writing it, so I don't know if Francine Kerner or
21 anyone else was involved, but I know there was a
22 policy issued.

1 Q What's Mr. Cesca's current position in the
2 Department of the Treasury?

3 A He is the -- I believe the special
4 assistant to the assistant Inspector General for
5 audit, Dick Callahan.

6 Q As far as the hierarchy of the department,
7 is that a position that's higher or lower than his
8 position as deputy Inspector General?

9 A Lower.

10 Q Do you know why he is currently in that
11 position?

12 A Basically because there is a new Inspector
13 General. That's my guess. I really don't know.

14 Q You don't know?

15 A No.

16 Q Do you have any knowledge of whether
17 Mr. Cutler first requested that the White House
18 receive transcripts on July 5, 1994?

19 A I am not aware of that.

20 Q Do you know Robert McNamara?

21 A I know who he is, yes.

22 Q Who is he?

1 A He is an attorney with the Office of
2 General Counsel of the Department of Treasury.

3 Q Have you ever heard anyone say that
4 requests were made -- the first request was made on
5 July 5, 1994 by Mr. Cutler for the transcripts?

6 A No, I haven't.

7 Q Would you be surprised to hear that?

8 A No.

9 Q Why is that?

10 A Well, I think, again, because there were
11 discussions -- Jane Sherbourne had raised that issue
12 very early on -- when we discussed interviews of
13 White House people, about wanting the transcripts.

14 Q And when did Mr. Cutler's office first
15 arrange for the IG's office to have access to White
16 House documents?

17 A We touched on it earlier. July 7th, I
18 believe, is when we got the documents.

19 Q I just want to show you a document, Bates
20 stamped 011735, 011736, which is -- first page
21 heading is "statement on access to depositions by
22 White House counsel."

1 The last paragraph reads "I should point
2 out that the investigation conducted by Treasury
3 Inspector General required access to the relevant
4 White House documents. Mr. Cutler's office arranged
5 for us to have that access on July 6th."

6 Does that refresh your recollection as to
7 when --

8 A That's correct. Well, if they gave them to
9 the department on the 6th, we got them on the 7th.

10 MR. PORTNOY: We haven't established the
11 witness has any knowledge of this document or its
12 veracity, have we?

13 MR. O'CALLAGHAN: I was asking if the
14 information on the document refreshed his
15 recollection.

16 MR. PORTNOY: It struck me his answer was
17 confirming -- was in the nature of confirming that
18 the document might be accurate, and I just want to
19 clarify whether the witness is confirming that the
20 document is consistent with his recollection or
21 whether he now has an independent recollection.

22 THE WITNESS: No, it is consistent with my

1 recollection, because of my notes that I saw earlier
2 that were dated July 7th, saying that Francine Kerner
3 had received the White House documents.

4 MR. O'CALLAGHAN: Okay, thank you.

5 BY MR. O'CALLAGHAN:

6 Q Have you ever seen this document before?

7 A No, I haven't.

8 Q Mr. Cottos, did anyone at RTC Inspector
9 General's Office express concern regarding
10 Ms. Kerner's role in the investigation?

11 A Yes.

12 Q Who expressed concern?

13 A Pat Black, the general counsel; Clark
14 Blight, the AIGI; and the two investigators, Sarah
15 Herlihy and Joan Dwyer, to my knowledge.

16 MR. PORTNOY: I don't mean to interrupt you
17 but you said Pat Black, the general counsel. Did you
18 mean Pat Black, counsel to the Inspector General or
19 did you mean General Counsel Ellen Kulka, K-u-l-k-a?

20 THE WITNESS: To my knowledge, Pat Black
21 the counsel to the RTC Inspector General expressed a
22 concern, and then the other people that I named,

1 Clark Blight, Joan Dwyer and Sara Herlihy.

2 BY MR. O'CALLAGHAN:

3 Q What were the concerns expressed by
4 Ms. Black?

5 A The same concerns that I had, that -- since
6 Ms. Kerner was in Jean Hanson's reporting chain.

7 Q Did Ms. Black have a similar reporting
8 chain at RTC IG, or was it different?

9 A I believe she is an interested penitentiary
10 counsel, so she reports directly to the Inspector
11 General.

12 Q Which differs from Ms. Kerner's role?

13 A That's correct.

14 Q And what concerns did Mr. Blight express?

15 A The same concerns. Everyone had the same
16 concerns.

17 Q Uniform concern by all the members of the
18 RTC IG, who expressed concern about it?

19 A That's correct.

20 Q Which was the same concerns that you held?

21 A Yes.

22 Q Did Treasury Inspector General's Office

1 receive information during the course of the
2 investigation regarding RTC's policy for handling of
3 confidential documents?

4 A I think we got that document as an
5 attachment to the report, because it is an exhibit, I
6 believe, in the report.

7 Q Do you have an understanding as to what the
8 RTC policy is for handling of confidential documents?

9 A No, I don't.

10 Q Did you read that document?

11 A I saw that document, and it's not included
12 in the report, but, no.

13 Q You didn't specifically review that --

14 A No, I did not.

15 Q Did RTC Inspector General's Office have an
16 opinion with regard to the use of the release of the
17 transcripts to the White House?

18 MR. PORTNOY: You mean collectively or did
19 individuals in the office?

20 BY MR. O'CALLAGHAN:

21 Q Did any individuals in the office?

22 A They had the same concerns that I had, and

1 they were upset at not being asked about, consulted
2 before the transcripts were released.

3 Q And why were they upset about not being
4 consulted?

5 A Because it was a joint investigation by
6 both offices.

7 Q Did anyone express specific concerns about
8 the nature of information that was conveyed to the
9 White House through the transcripts?

10 A Not to my knowledge.

11 Q Were you involved in any meetings where the
12 transfers of the transcripts was discussed that
13 involved RTC personnel and Treasury IG personnel?

14 A No, I was not.

15 Q Did you have any discussions with Clark
16 Blight with reference to handing over the transcripts
17 on July 23rd?

18 A We spoke about it the week of July 25, yes.

19 Q What were the specifics of the discussion?

20 A As I stated earlier, we were both very
21 upset that the transcripts had been given away
22 without us being consulted.

1 Q Did he express any specific concerns about
2 the nature of information that was contained in the
3 transcripts?

4 A Not to my knowledge.

5 Q Have you ever learned that members of the
6 RTC IG's office were upset that the transcripts
7 weren't redacted?

8 A Yes. I think there was -- after they were
9 released, there was some concern expressed about
10 that.

11 Q And what concern was expressed by them?

12 A About some of the information that was
13 contained in the transcripts.

14 Q Specifically what type of information?

15 A I think there was some information in there
16 regarding the criminal referrals, and Pat Black
17 expressed a concern about that.

18 Q What concern did she express?

19 A Just what I said, concern about certain
20 information that she felt needed to be redacted from
21 those transcripts before they were released.

22 Q Is that part of the reason why they are

1 upset about the transfers of the transcripts?

2 A I suppose it was but I don't know.

3 Q You weren't specifically told that?

4 A No, I wasn't.

5 Q Before the transcripts were released, had
6 you recognized that that information would be of
7 concern to the RTC Inspector General's Office?

8 A I don't understand the question.

9 Q Had any discussions taken place in the
10 Treasury Inspector General's Office with regard to
11 the information that was contained in the transcripts
12 regarding the criminal referrals?

13 A No.

14 MR. O'CALLAGHAN: I would like to take a
15 10-minute break. Off the record.

16 (Recess.)

17 MR. O'CALLAGHAN: Back on the record.

18 BY MR. O'CALLAGHAN:

19 Q Mr. Cottos, have you been asked to turn
20 over any documents in connection with an
21 investigation conducted by the Independent Counsel's
22 office?

- 1 A Yes, I have.
- 2 Q Who was in charge of the document
3 production that you were involved in?
- 4 A Rick Doery.
- 5 Q Have you ever heard reports that Mr. Doery
6 directed that certain documents not be turned over in
7 connection with that document request?
- 8 A I don't know what Mr. Doery turned over in
9 relationship to that request.
- 10 Q Have you ever learned that Mr. Doery
11 requested that anything that -- any E-mails or
12 documents that had negative references to Francine
13 contained in them not be turned over?
- 14 A No, I never heard that.
- 15 Q Have you heard of anyone impeding the
16 Independent Counsel's investigation in any way?
- 17 A No, I have not.
- 18 Q Have you learned that transcripts in
19 connection with the investigation were sent over to
20 the White House in a piecemeal fashion during the
21 course of the investigation?
- 22 A No, I have not.

- 1 Q In connection with the investigation that
2 you conducted for OGE, to help OGE conduct their
3 analysis of White House-Treasury contacts, did
4 Francine Kerner have dealings with anyone else in the
5 White House other than Jane Sherbourne?
- 6 A Not to my knowledge.
- 7 Q Did she have contacts with anyone in the
8 White House for other matters?
- 9 A Not to my knowledge.
- 10 Q Did Ms. Kerner ever express to you a desire
11 to work in the White House?
- 12 A Not to -- no, she never said that to me.
- 13 Q Have you ever heard that she's expressed
14 that sentiment?
- 15 A No.
- 16 Q Was nonpublic information that was
17 contained in the transcripts that were sent over to
18 the White House?
- 19 A I believe there was.
- 20 Q What's your understanding as to the
21 nonpublic information that was contained in the
22 transcripts?

1 A The nonpublic information was RTC criminal
2 referrals that were included, and RTC made the
3 decision that that was nonpublic information. And
4 subsequent -- Pat Black is the general counsel of
5 RTC. The Inspector General is the person who
6 redacted the transcripts subsequently.

7 Q At the time, on the 25th when you heard
8 that the transcripts were turned over to the White
9 House, were you of the opinion that Treasury IG's
10 office also should have been notified before that
11 occurred?

12 A Treasury IG's office, Treasury's office.

13 Q RTC IG office?

14 A Yes, I felt RTC IG's office should have
15 been consulted.

16 Q And you also thought you should have been
17 consulted?

18 A Yes, I did.

19 Q When was RTC's Inspector General's Office
20 informed that the transcripts had been turned over?

21 A I don't know.

22 MR. O'CALLAGHAN: I have no further

1 questions at this time. You want to go off the
2 record for a little while?

3 MR. PORTNOY: Why don't we take two minutes
4 and then I think I will be able to get with it.

5 MR. O'CALLAGHAN: Okay, sure.

6 (Discussion off the record.)

7 EXAMINATION

8 BY MR. PORTNOY:

9 Q Good afternoon, Mr. Cottos. My name is Jim
10 Portnoy. I am counsel for the Democratic Senators on
11 the Special Committee and I will also be asking you a
12 few questions this afternoon.

13 A Okay.

14 Q Tell me, if you would, your opinion of
15 Francine Kerner, personally.

16 A Personally? I think that she is a
17 competent attorney.

18 Q Do you think she is honest?

19 A Yes.

20 Q Honorable?

21 A Yes.

22 Q Do you have any reason to believe that

1 she's ever lied to you?

2 A Yes.

3 Q Perhaps you could explain?

4 A I think there were some -- there were some
5 negotiations during the almost two years that she was
6 the general counsel, that I was concerned about
7 information, how it was handled; her involvement in
8 certain investigations.

9 Q Perhaps you could be more precise.

10 A Okay. The biggest disagreement that
11 Francine and I had prior to this investigation, the
12 Whitewater investigation, was her role as counsel to
13 the Inspector General, and wanting to get more
14 involved in investigative matters within my
15 jurisdiction. And I think that we had a lot of
16 discussions about her role and where she fit in to
17 the organization, the way she felt, and the way I
18 felt.

19 And I'll sum it up quickly this way: She
20 had spent some time at the Commerce Department as the
21 counsel to the Inspector General there, and they had
22 a policy at Commerce that any criminal investigation

1 had to be reviewed by Francine Kerner before it could
2 be presented to an assistant United States Attorney
3 for a prosecutive opinion. And when Francine came to
4 Treasury, I think she would like to have seen that
5 same policy in effect.

6 I've a real problem, being a criminal
7 investigator for almost 20 years, criminal
8 investigators should be able to go directly to the
9 prosecuting attorney without having to have the case
10 reviewed by an attorney in Washington, and that was
11 the biggest difference that we had.

12 Q So you had a substantive difference with
13 respect to what your responsibilities should be?

14 A That's correct.

15 Q Did that substantive difference create a
16 difficult work environment?

17 A At times. I think we discussed that
18 situation, and I think that, by and large, she
19 understood that Treasury was not like Commerce, and
20 after a while backed off as far as the desire to get
21 involved in all of our investigations.

22 Q Would it be fair to say that she retained

1 an interest in becoming more involved in
2 investigations?

3 A You would have to ask her that question.

4 Q In your estimation.

5 A In my estimation, I think she wanted to be
6 more involved in investigations, yes.

7 Q Would it be fair to say that you continued
8 to be of the view that she should not?

9 A That's fair.

10 Q Would it be fair to say that your opinion
11 of her role in the Whitewater investigation was
12 reflective of your general opinion of what her role
13 should be?

14 A Yes.

15 Q And that your concern regarding her
16 involvement in the Whitewater investigation reflected
17 your generalized concern about her involvement in
18 investigations?

19 A No, I think it was different in Whitewater
20 because of the reporting chain. The fact that she
21 reported to Jean Hanson, that was very different than
22 just an ordinary investigation that we were

1 conducting that she wanted to be more involved in.

2 Q So your concerns were heightened?

3 A Heightened is a good word.

4 Q But would it be fair to say that part of
5 your concern was your ongoing concern about
6 Ms. Kerner's role in investigations?

7 A I think that had been pretty well resolved
8 at that time. I don't think that she was -- she had
9 backed off, I think, so that had pretty well been put
10 to rest as far as her involvement.

11 Q So then would it be fair to say that your
12 only concern with Ms. Kerner's involvement, or her
13 role in this investigation, was a result of the
14 possible involvement of members of the Office of
15 General Counsel?

16 A To the largest extent, yes.

17 Q If there were no investigating being done
18 that involved members of the Office of General
19 Counsel, would you say that Francine Kerner's role
20 was appropriate?

21 A Her role as coordinating interviews, and
22 giving suggested questions would be appropriate for a

1 counsel to the Inspector General in my opinion, yes.

2 Q So, it would be appropriate for the counsel
3 to the Inspector General to serve as liaison with
4 counsel to the Inspector General of the RTC?

5 A Yes.

6 Q As liaison to the White House?

7 A Yes.

8 Q As liaison to the General Counsel's office
9 of Treasury?

10 A As liaison, yes.

11 Q And it would be appropriate for the counsel
12 to the Inspector General to provide guidance to
13 investigators with respect to legal matters?

14 A Yes.

15 Q To help investigators frame their
16 investigation in ways that take into account legal
17 definitions or legal concerns?

18 A I think the difference there would be as
19 a -- if it is a criminal matter, since the general
20 counsel does not prosecute cases, that most of those
21 discussions would be with the assistant United States
22 Attorney assigned to the case, rather than going

1 through counsel to the Inspector General.

2 If there were a question that they had
3 about evidence or things like that, yes, I think that
4 would be an appropriate issue to be discussed with
5 the counsel to the Inspector General.

6 Q But you don't have an assistant United
7 States Attorney assigned to a case until after there
8 has been a criminal referral, do you?

9 A Generally we take cases fairly early.
10 Because we have a very small investigative work
11 force, we can't afford to spend six months working on
12 a case and then find out no one is interested in
13 prosecuting, so we take cases very early, to make
14 sure there is an interest before we invest a lot of
15 time.

16 Q When you say you take cases early --

17 A We go to the U.S. Attorney's Office a lot
18 earlier than other places I have worked because of
19 our manpower.

20 Q But it would be fair to say that you
21 investigate cases before any assistant United States
22 Attorney is involved?

1 A Yes, yes. We do some investigation,
2 absolutely.

3 Q And in those instances you might require
4 guidance with respect to legal matters?

5 A That's possible, yes.

6 Q And the logical person to whom you would
7 direct those inquiries would be the counsel to the
8 Inspector General?

9 A That's correct.

10 Q In such a situation, would it be
11 appropriate for the counsel to the Inspector General
12 to provide suggested questions?

13 A Yes, depending on the situation.

14 MR. O'CALLAGHAN: Suggested questions for
15 what?

16 MR. PORTNOY: For witnesses.

17 THE WITNESS: Yes.

18 BY MR. PORTNOY:

19 Q I believe you stated earlier you viewed it
20 inappropriate for Ms. Kerner to be suggesting
21 questions for witnesses in connection with the
22 investigation and the discussion here?

1 A No, I didn't say that at all. I said that
2 I welcomed any questions, but my concern was that I
3 needed them earlier than the morning that the
4 interview was scheduled.

5 Q Let me pursue that a bit because I
6 apparently misunderstood. Would it then be your
7 judgment that it was appropriate for Ms. Kerner to
8 suggest questions to your investigators?

9 A Yes. I did not have a problem with her
10 suggesting questions.

11 Q Did you ever review the questions that she
12 suggested?

13 A Generally, no. Other than glancing or
14 pulling them off the fax machine, but, no, generally,
15 when I got the questions, I gave them to the
16 investigators, and said include these, take a look at
17 them, et cetera, which they did. But did I
18 personally read them? No.

19 Q Did you ever come to a conclusion that
20 Ms. Kerner's questions would in any way skew the
21 results of your investigation?

22 A No, I did not.

1 Q Was there any indication that her questions
2 were intended to conceal information?

3 A Not to my knowledge.

4 Q Would it be fair to say that, to the best
5 of your knowledge, her questions were a good faith
6 attempt to assist the investigation?

7 A Yes.

8 Q Did any of your investigators ever express
9 a different sentiment?

10 A Nope. Not to me they didn't.

11 Q Are you aware that they ever expressed a
12 different sentiment to anybody?

13 A No, I am not.

14 Q So, with the exception of the involvement
15 or potential involvement of officials of the Office
16 of General Counsel, is there anything about the way
17 Francine Kerner conducted herself with respect to
18 your investigation that you viewed as not properly
19 her role?

20 A Yes, I think the role involving the
21 transcripts. I am not really sure where and when
22 transcripts were distributed. And I think the other

1 main question was the list of witnesses, if that was
2 being shared with people, which came up during the
3 investigation, and whether --

4 Q Let me stop you for a second.

5 A Certainly.

6 Q Do you have any -- I believe you said
7 earlier that one of Ms. Kerner's responsibilities --

8 A Right.

9 Q -- was to coordinate witnesses.

10 A That's correct.

11 Q In connection with the performance of that
12 responsibility, wouldn't Ms. Kerner have been
13 required to transmit to people outside your office
14 the identity of potential witnesses?

15 A She would not be required to tell all the
16 witnesses who else was being interviewed and when.
17 And the feedback that we got was that the list of
18 potential witnesses was distributed and that was my
19 concern.

20 Q Do you know to whom that was distributed?

21 A Office of General Counsel employees, to the
22 best of my knowledge. And that was a concern, and

1 the other concern being the briefings, when
2 Mr. Bowman made the reference to he had not been
3 briefed therefore he could not be interviewed, that
4 was very much a concern to me.

5 If the interviews that Francine was setting
6 up of the people was not when they would be
7 available, but was taking into consideration when
8 they could be briefed and then be available, that was
9 very much a concern to me.

10 Q But, do you have any evidence or any reason
11 to believe that Ms. Kerner was concerned with when
12 people would be briefed?

13 MR. O'CALLAGHAN: See, it sounds like a
14 double question.

15 MR. PORTNOY: Let me go back and state it
16 again.

17 BY MR. PORTNOY:

18 Q You indicated that Mr. Bowman's reluctance
19 to be interviewed until he was briefed caused you
20 concern?

21 A Yes, it did.

22 Q Do you have any reason to believe that he

1 anticipated being briefed by Francine Kerner?

2 A No.

3 Q Do you have any reason to believe that
4 Francine Kerner advised him to be briefed?

5 A That she personally advised him? No, I
6 don't.

7 Q Do you have any reason to believe that
8 Francine Kerner ever personally spoke with Mr. Bowman
9 with respect to his interview?

10 A No, I don't.

11 Q So, would its -- strike that.

12 MR. O'CALLAGHAN: Can we go off the record
13 for just a second.

14 (Discussion off the record.)

15 BY MR. PORTNOY:

16 Q Sir, do you have any understanding at all
17 of the source of Mr. Bowman's concerns?

18 A All I can state for sure is that we were
19 advising Francine Kerner who we wanted to interview.
20 And between that information and the interviews
21 themselves, we subsequently found out that briefings
22 were being -- were being held, that people were

1 reviewing documents before they were interviewed by
2 us. What happened in between, I can't say.

3 However, all the people involved worked for
4 the Office of General Counsel for Treasury
5 Department, and that was my concern.

6 Q Was it part of Ms. Kerner's job to contact
7 the Office of General Counsel and arrange for the
8 appearance of witnesses?

9 A Yes.

10 Q Do you have any reason to believe that her
11 contact with the Office of General Counsel with
12 respect to the scheduling of witnesses entailed any
13 kind of substantive discussion as to what the
14 witnesses might be expected to testify about?

15 A I don't know the answer to that, and that
16 was one of my concerns. If there were briefings
17 being done, I didn't know what else was being
18 relayed, and that was a concern.

19 Q Sir, did you discuss with anyone your
20 appearance here today, before today?

21 A Discuss with anyone --

22 Q Yes.

1 A -- the fact I was going to testify today?

2 Q Yes.

3 A Yes.

4 Q With whom, sir?

5 A With the two investigators, Fred Coco and
6 Dan O'Rourke.

7 Q Did you review any documents?

8 A Yes, I did.

9 Q What did you review?

10 A I reviewed my notes, my meeting notes, many
11 of which were referred to this morning.

12 Q Why did you meet with your investigators?

13 A We didn't really meet. We talked -- one of
14 them still is in the office next to me -- talked
15 about refreshing my memory about how we got started.

16 This was a year plus ago, a lot has
17 happened in between. Trying to refresh my memory of
18 everything that transpired.

19 Q And why did you review documents?

20 A To refresh my memory.

21 Q In what way, sir, is that different from a
22 witness that your office intends to investigate or

1 depose speaking with another person or reviewing
2 documents prior to the interview?

3 A It is not.

4 Q So why do you view it as inappropriate for
5 those witnesses to do so but appropriate for you to
6 have done so?

7 A That's a good question. I think the
8 inference is again the concern with the reporting
9 chain involved, and if there was additional
10 information that was provided -- in other words, if
11 it was just a matter of they're going to interview
12 you on this date, if you have any documents you might
13 want to look at them to refresh your memory, there is
14 no problem with that.

15 If it was this is the line of questioning
16 that they are going to take, then that's very
17 different. My concern was I didn't know what took
18 place in those conversations. I don't know if it was
19 A or if it was B. That's my concern and that's the
20 difference.

21 Q You don't have any basis to believe that
22 witnesses were given substantive information, do you?

200

1 A I don't have anything -- no.

2 Q Just a suspicion?

3 A Just a concern.

4 Q A concern?

5 A Yes, sir.

6 Q Wouldn't even say it rises to the level of
7 a suspicion?

8 A No.

9 MR. O'CALLAGHAN: I am going to ask, just
10 for clarity, if there is a difference between concern
11 and suspicion and what it is.

12 You clarified levels and I don't know if
13 that's appropriate or not. If it is, let's find out
14 but I would like to have that clarified.

15 BY MR. PORTNOY:

16 Q Okay, let's -- I am not sure that words of
17 common usage actually require any further
18 clarification, but would it be fair to say that your
19 concern is a generalized one based on Ms. Kerner's
20 formal position?

21 A Yes.

22 Q And that it is not a specific concern based

1 upon any actual information in her possession?

2 A That's correct.

3 Q Just to clarify, sir, I believe in this
4 morning's discussion you stated that you did not
5 think anyone should be briefed before speaking with
6 your office. Do you recall making that statement?

7 A Briefed -- you would have to give me the
8 context. No, I don't.

9 Q That's precisely what I'm hoping that we
10 can discuss for a moment.

11 A Okay.

12 Q I believe you just now testified that it
13 would be appropriate for potential witnesses to speak
14 with each other to refresh their recollection?

15 A If they were both going to be interviewed,
16 to discuss their testimony, then I would say no.

17 Q So it would be inappropriate for a person
18 who was expecting to be interviewed to discuss his
19 testimony with someone else?

20 A If it was going to taint their testimony, I
21 would say yes. Just to refresh the memory, I would
22 say no.

1 Q How would you draw that distinction?

2 A If it is a matter of reviewing documents or
3 your own notes from that time, then I think it is
4 appropriate.

5 If you are talking about reviewing someone
6 else's notes from that time, then I think that's a
7 little different, if they might be a witness also.

8 Q What about speaking with other people who
9 might have been involved in the events in question?

10 A That depends. It may be appropriate and it
11 may not be appropriate.

12 If you were at a meeting together, and you
13 were talking about it, then that's fine; but if one
14 was at a meeting and one wasn't, to talk about what
15 happened at that meeting, then maybe that wouldn't be
16 appropriate.

17 Q Did you confer with counsel prior to this
18 deposition?

19 A Yes, I did.

20 Q And I don't want to inquire into the
21 substance of your discussion with counsel, but would
22 it be fair to say that your counsel gave you some

1 general information about what was likely to occur
2 today?

3 A General information, as far as scope and
4 things, yes. Very general information.

5 Q Could your conversation with counsel fairly
6 be described as having been briefed?

7 A That's -- that's -- that's terminology.
8 Someone might say that, yes.

9 Q So it is conceivable that Mr. Bowman meant
10 he hadn't had an opportunity to speak with counsel
11 yet?

12 A Did he need to speak to counsel before he
13 agreed to the interview by us? I don't -- yes,
14 that's a matter of interpretation.

15 Q But when Mr. Bowman said he hadn't been
16 briefed yet, it doesn't necessarily mean that he
17 anticipated some sort of substantive instructions?

18 A Well, that was my concern. I didn't know
19 what kind of briefing he was talking about. That's
20 exactly my concern.

21 Q Okay, but again we are talking about a
22 concern based upon your years of experience as an

1 investigator? If you could answer out loud, sir.

2 A Yes, that's correct.

3 Q But we are not talking about a concern
4 based upon specific information of any kind?

5 A That's correct.

6 Q This investigation was not usual, was it,
7 sir?

8 A No, it was not.

9 Q It encompassed a great deal of information?

10 A Yes.

11 Q Fairly wide range of activities?

12 A Yes.

13 MR. O'CALLAGHAN: Do you mean "wide range
14 of activities" in the investigation or in the
15 underlying activities that were being looked at?

16 BY MR. PORTNOY:

17 Q You investigated a wide range of
18 activities?

19 A Yes.

20 Q Are you proud of the results of your
21 investigation?

22 A Yes, I am.

1 Q Did you consider the investigation to have
2 been thorough?

3 A Yes.

4 Q Complete?

5 A Yes.

6 Q Accurate?

7 A Yes.

8 Q Professional?

9 A Yes.

10 Q Do you have any reason to believe that the
11 results of your investigation were tainted in any way
12 by anything that occurred during the course of the
13 investigation?

14 A Of our actual investigation, no.

15 Q Is there any further investigating you
16 would have done if you'd had a little more time?

17 A No.

18 Q Is there anyone else you would have spoken
19 with?

20 A No. We had access to all the witnesses
21 that we deemed necessary. No one restricted us on
22 witnesses, whether it be the White House, Treasury,

1 RTC. Everyone we felt we had to interview was made
2 available to us.

3 Q Did you receive access to all the documents
4 that you felt you needed access to?

5 A Yes, we did.

6 Q No one tried to impede your access to
7 documents?

8 A No, they did not.

9 Q Did anyone try to limit the subject matter
10 of your investigation?

11 A Only to the extent as we discussed earlier,
12 about -- again, that was the difference between RTC
13 and us, I guess, about how far that information went,
14 and that was not -- I think Treasury IG agreed, we
15 disagreed with RTC IG, but as far as anyone within
16 the Treasury Inspector General's Office limiting us,
17 no.

18 Q The disagreement as to scope you just
19 mentioned was a disagreement between your office and
20 the RTC Inspector General's Office; is that correct?

21 A That's correct. That's correct.

22 Q No one from outside those offices tried to

1 impose limitations, did they?

2 A No, they did not.

3 Q Describe for me if you would, sir, the
4 relationship among the Treasury Department, the
5 Office of Government Ethics, and the two Inspector
6 General's Offices.

7 A I think that we met early on, had a meeting
8 at the Office of Government Ethics with everyone
9 represented there. And we all agreed, we all got on
10 the same page regarding what we were looking for in
11 this investigation. And I think that OGE gave us the
12 questions that they needed answered, and I think that
13 the report that we did answered those questions. And
14 to that respect, I don't think there was any problems
15 within the investigation, of the two offices working
16 together, RTC OIG and Treasury OIG.

17 Q Would it be fair to say that the reason
18 this investigation was conducted was because
19 Secretary Bentsen asked OGE to perform an analysis?

20 A That's correct.

21 Q And OGE required the assistance of the
22 Inspectors General because it lacked an investigative

1 capacity?

2 A That's correct.

3 Q So would it be fair to say that the
4 sponsor, if you would, of this investigation was
5 Secretary Bentsen?

6 A Yes.

7 Q And that Secretary Bentsen was the end user
8 of the product?

9 A Yes, he was.

10 Q Would it be fair then to say that the
11 information compiled in the investigation was
12 Secretary Bentsen's to disseminate as he saw
13 appropriate?

14 A That's more of a legal question.

15 As far as dissemination of information,
16 that's counsel's area. The report was done for him,
17 that I can say, yes. Whether that's our work
18 product, the Inspector General's work product or the
19 Secretary's work product, that I don't know.

20 Q But the report was done for Secretary
21 Bentsen?

22 A That's correct.

1 Q During the course of the investigation,
2 would you say that your office was acting on behalf
3 of Secretary Bentsen?

4 A We were doing a report at his request. I
5 don't know how else to say that. If you say on
6 behalf of, then I don't know. It was his request
7 that we do the investigation, yes.

8 Q In your judgment, would you have conducted
9 an investigation into this conduct if Secretary
10 Bentsen had not asked you?

11 A Possibly, because of the letter from
12 Congressman Wolf, yes.

13 Q But the actual precipitating --

14 A The Secretary asked for it before
15 Congressman Wolf did.

16 Q Would it be fair to say that when the
17 Secretary asks your office to conduct an
18 investigation, you are favorably predisposed to
19 accede to that request?

20 A Generally speaking, yes.

21 Q How did you perceive the nature of your
22 relationship with the Office of Government Ethics?

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1 A Very similar to the Secretary in this
2 aspect, that they were the -- when you talk about the
3 product being done for the Secretary, the information
4 we were gathering was for OGE to use to make a
5 decision, so it kind of goes up the line. We were
6 gathering the facts to give to them, so that they
7 could give an opinion to the Secretary. So, an end
8 user.

9 Q Do you have an opinion as to whether the
10 Office of Government Ethics could have released these
11 transcripts if it so chose?

12 A I don't have an opinion either way. You
13 mean do I think they did?

14 Q No. Do you think that it would have been
15 appropriate for them to do so?

16 A During the investigation? No. I think I
17 have said that several times today, that it was my
18 opinion that the transcripts should not be released
19 by anyone until the investigation is over and the
20 report had been finalized.

21 Q Have you ever heard that -- are you
22 familiar with the name Jane Ley?

1 A Yes, I am.

2 Q Who is Ms. Ley?

3 A Ms. Ley is the attorney from the Office of
4 Government Ethics who was our main contact, who was
5 the preparer of the opinion, I guess is the way that
6 I can put it. She is the one that we met with and
7 the one that we gave the information to for an
8 opinion.

9 MR. O'CALLAGHAN: Can we go off the record
10 for a second.

11 (Discussion off the record.)

12 (The reporter read the record as requested.)

13 BY MR. PORTNOY:

14 Q Are you aware that Ms. Ley had periodic
15 meetings with the White House during the course of
16 your investigation?

17 A I don't know if she did or not.

18 Q Would it have been reasonable for the White
19 House or the White House counsel's office to assume
20 that Ms. Ley was speaking for OGE and the two
21 Inspectors General's Offices when she spoke to him?

22 MR. O'CALLAGHAN: With regard to what?

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1 MR. PORTNOY: As a general proposition.

2 THE WITNESS: You want my opinion about
3 that? I think the Inspector General's can speak for
4 themselves. I don't think that OGE would be speaking
5 for us.

6 BY MR. PORTNOY:

7 Q In connection with the investigation?

8 A I would think it was given to us to
9 investigate, and when we gave our product to OGE, it
10 wasn't our job to issue an opinion. So during the
11 interim, until they got the report from us, my
12 opinion would be, no, it would not be appropriate for
13 her to speak to the White House on our behalf.

14 Q Would it be reasonable for the White House
15 to assume that Ms. Ley was speaking on behalf of all
16 the participants in the investigation?

17 A I can't answer that.

18 Q Have you ever heard before that Ms. Ley
19 advised Ms. Sherbourne that she should procure annual
20 review of the transcripts of White House witnesses?

21 A No, I have never heard that before.

22 Q Would you be surprised to hear that?

1 A Yes, I would be surprised to hear that.

2 Q Assuming that to be true --

3 MR. O'CALLAGHAN: You are assuming that
4 characterization to be true that she told them to
5 procure and also to review -- procure from I don't
6 know where and also to review.

7 BY MR. PORTNOY:

8 Q Assuming that Ms. Ley in fact advised
9 Ms. Sherbourne --

10 MR. O'CALLAGHAN: Be careful.

11 BY MR. PORTNOY:

12 Q -- or another representative of the White
13 House counsel's office to review deposition
14 transcripts from your investigation prior to the
15 completion of your investigation, in your opinion,
16 would it be reasonable for the White House to assume,
17 that Ms. Ley was speaking for the three offices
18 involved in the investigation?

19 MR. O'CALLAGHAN: Jim, I am not trying to
20 be a pain but to be fair to the witness, if you put
21 in a time frame when you are saying in fact this may
22 have happened, it puts it in perspective. You know,

1 before or after the investigation, during the
2 investigation.

3 MR. PORTNOY: I said during.

4 THE WITNESS: I think he said during.

5 MR. O'CALLAGHAN: I apologize.

6 THE WITNESS: In my opinion, no. I
7 understand why the White House would ask, that's
8 never been a question. But again, I don't -- I can't
9 speculate what Jane Ley said, but my opinion is that
10 they still shouldn't get it, get the transcripts.

11 BY MR. PORTNOY:

12 Q Would it be reasonable for the White House
13 to believe that Francine Kerner was speaking for your
14 office?

15 A Yes.

16 Q Would it be reasonable for the White House
17 to assume that Mr. Cesca is speaking for your office?

18 A Yes.

19 Q So, if either Ms. Kerner or Mr. Cesca
20 approved of the White House receiving transcripts, it
21 would be reasonable for the White House to assume
22 that that constituted approval of your office?

1 A Yes.

2 Q You testified earlier that you became aware
3 contemporaneously that Secretary Bentsen was
4 receiving a draft of your report?

5 A I was told that we were going to give him a
6 draft, yes.

7 Q Were you told when he actually was given a
8 draft?

9 A Yes. I handed it to Bob Cesca after I had
10 physically brought it over from Rosslyn, after having
11 it signed by Jack Adair and stamping "draft" on it,
12 and giving it to Bob Cesca to sign. And as I said,
13 he took one upstairs and I physically took the other
14 one to OGE, so I very vividly remember that, yes.

15 Q You could probably highlight the time and
16 place. Please answer out loud.

17 I'm sorry. I know in regular conversation
18 we frequently nod and gesture but unfortunately the
19 transcript won't reflect it.

20 Do you have any evidence that the draft
21 report or the exhibits to the draft report were
22 provided to any witness that you interviewed prior to

1 their being interviewed?

2 A No.

3 Q Do you have any reason to believe that the
4 draft report or the exhibits to the draft report were
5 provided to any witness that you interviewed prior to
6 their being interviewed?

7 A No, there was only one witness interviewed
8 after the issuance of the draft report.

9 Q Was that Mr. Ludwig?

10 A That was Mr. Ludwig.

11 MR. PORTNOY: For the court reporter,
12 L-u-d-w-i-g.

13 BY MR. PORTNOY:

14 Q Would it be fair then to say that, for all
15 practical purposes, your investigation was virtually
16 complete at the time that Secretary Bentsen received
17 the draft report?

18 A Yes.

19 Q Did your report change much between the
20 draft version and the final version?

21 A Substantively, no. As far as wordsmithing,
22 unfortunately, yes. I guess I would say minor

1 changes in, you know, was it this word or was it that
2 word. In substance, no.

3 Q Do you have any evidence that the provision
4 of the draft report to Secretary Bentsen or the
5 exhibits to the report to Secretary Bentsen had any
6 effect whatsoever on the final content of your
7 report?

8 A No.

9 Q Do you have any reason to believe that the
10 provision of the draft report or the exhibits had any
11 effect whatsoever on the content of your report?

12 A No. On the final report, no.

13 Q I believe you also testified earlier that
14 on the 25th of July you learned that deposition
15 transcripts had been conveyed to the White House?

16 A That's correct.

17 Q And the date on which those transcripts
18 were conveyed was the 23rd of July?

19 A On Saturday the 23rd, that's correct.

20 Q You just testified that on the 22nd of July
21 your investigation was virtually complete. Would it
22 then also be fair to say that your investigation was

1 virtually complete on the 23rd of July?

2 A Yes, that's fair.

3 Q Do you have any reason to believe that the
4 deposition transcripts that were provided to the
5 White House were used to prepare any witness you
6 interviewed for their testimony prior to their having
7 been interviewed?

8 A No. My concern was pointing out
9 inconsistencies for testimony in front of the
10 committees, but our interviews were already done at
11 that point, so no, that did not affect our
12 interviews.

13 Q When you completed your draft report on the
14 22nd of July, you contemplated that the depositions
15 would be attachments to your report?

16 A Yes.

17 Q At that time, was it your understanding
18 that your report would be made public?

19 A It was not my understanding. I believe
20 that came up in discussion later, when the report was
21 being finalized. When we initially did the report,
22 no, there was no discussion about whether it would be

1 made public or not.

2 Q When did you first learn that the report
3 was going to be made public?

4 A Somewhere between the draft and the final,
5 so between July 22nd and July 29th.

6 Q Did you object to the report being made
7 public?

8 A After it was completed, no.

9 Q In retrospect, do you have any objection to
10 the report having been made public?

11 A Other than the information that needed to
12 be redacted that was RTC's concern, no.

13 Q So it was appropriate for the report and
14 the depositions to be made public by Secretary
15 Bentsen?

16 A In my opinion, yes.

17 Q And that occurred on the 30th of July?

18 A Yes.

19 MR. O'CALLAGHAN: You are saying with
20 redactions?

21 THE WITNESS: Yes, with the appropriate
22 redactionings of RTC information, yes.

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1 BY MR. PORTNOY:

2 Q At the time you completed your draft
3 report, had there been any discussion of redaction at
4 all?

5 A In the draft report, no.

6 Q So the issue of redaction hadn't arisen?

7 A That's correct.

8 Q You testified that, in your view, it was
9 appropriate for the report and the exhibits to be
10 made public on the 30th of July, when Secretary
11 Bentsen did so?

12 A Yes.

13 Q And you've testified that you objected to
14 the release of the depositions and the draft report a
15 week earlier?

16 A Yes. Because of -- well, when I say the
17 report being released, other than transcripts to be
18 used for people that had to testify in front of the
19 House committee and the Senate committee, that was
20 the concern that I had all along. And I don't know
21 the dates of when everyone testified, but that was my
22 concern about releasing it, was if, again, people

1 could read what everyone else had said, and whether
2 that would alter their testimony.

3 Q Do you have any reason to believe that
4 anyone before the Congress altered their testimony
5 based upon having read either the depositions or your
6 report?

7 A I think that, in the testimony of it,
8 Mr. Altman, he indicated that he had gotten copies of
9 all of our interviews, and because he contradicted
10 one of the questions that was asked -- that was the
11 first I knew that Treasury people had been given
12 copies of the transcripts prior to the completion of
13 the report -- and that was a concern to me, because I
14 don't know whether anyone else altered their
15 testimony based on being able to read anyone else's
16 transcripts.

17 Q But, to state that in the affirmative,
18 would it be fair to say that you have no evidence
19 that anyone altered their testimony based upon access
20 to the report of the transcript?

21 A That's correct.

22 MR. O'CALLAGHAN: Other than Mr. Altman's

1 comments.

2 MR. PORTNOY: I don't believe the witness
3 testified Mr. Altman altered his testimony.

4 THE WITNESS: Right, what Jim said is
5 correct. That's when I found out he had seen other
6 transcripts but I don't know that that affected his
7 testimony.

8 BY MR. PORTNOY:

9 Q You stated repeatedly, sir, that you were
10 concerned that witnesses might essentially share
11 testimony prior to appearing before the Congress?

12 A Yes.

13 Q What's your basis for objecting to
14 witnesses comparing testimony prior to their
15 appearance before Congress?

16 A I think in general -- I have been in the
17 investigative business a long time, and I think
18 witnesses should be testifying to information they
19 have rather than information that another witness
20 has. And that's the concern. Reviewing their own
21 documents is one thing, reviewing someone else's
22 testimony and knowing what they are going to testify

1 to can certainly affect the testimony of the witness,
2 and that was my concern.

3 Q There is no prohibition against witnesses
4 speaking with each other before testifying before
5 Congress, is there?

6 A Absolutely.

7 Q And there is no prohibition against
8 witnesses reviewing documents, in either their own
9 files or their agency's files, before testifying?

10 A No -- that's correct.

11 Q So there is no way to keep witnesses
12 hermetically sealed from each other prior to their
13 testimony, is there?

14 A That's correct.

15 Q At most this would be an incremental
16 concern, would it not?

17 A Define "incremental concern."

18 Q Well, it is not as though witnesses'
19 recollections were completely pure ever.

20 A I guess that's true.

21 Q So the issue is whether a witness had
22 slightly more exposure to the testimony or the

1 potential testimony of another person?

2 A The issue is whether a witness's testimony
3 was altered by seeing someone else's testimony.
4 That's the best way I can put it.

5 Q Why were you concerned?

6 A Why was I concerned?

7 Q Why were you concerned --

8 A Because it was a -- I'm sorry.

9 Q -- whether witnesses shared testimony or
10 otherwise reviewed the testimony of third parties
11 prior to testifying before Congress?

12 A Because I believe the process should not be
13 tainted, and I think whether it be a court of law or
14 a hearing in front of a committee, that people should
15 testify to what they know, and not be influenced by
16 someone else's testimony.

17 Q But it is not your responsibility, is it,
18 sir, to concern yourself with the testimony presented
19 before Congress?

20 A I am concerned with how a product that my
21 office put together, that I was responsible for, was
22 used, and if that product was used for some purpose

1 other than what it was intended, yes, I am concerned,
2 because that reflects on me.

3 Q Did anyone from the Congress in any way
4 every contact you and ask you to prevent witnesses
5 from reviewing each other's testimony?

6 A No, they did not.

7 Q This was a responsibility you took upon
8 yourself?

9 A That's correct.

10 Q Have you ever testified before Congress,
11 sir?

12 A Yes, I have.

13 Q And did you prepare for your testimony?

14 A Yes, I did.

15 Q Did you review materials?

16 A Yes, I did.

17 Q Did you meet with other people?

18 A Yes.

19 Q Did you view that --

20 A When appropriate.

21 Q Did you view that as part of your
22 obligation to provide Congress with full and accurate

1 information?

2 A Yes, I did.

3 Q Was there any information that you chose
4 not to review? In other words, was there any
5 information you considered pertinent to your
6 testimony before Congress that you chose not to
7 review so as to maintain the purity of your
8 testimony?

9 A Not in my experience, no. Not for the
10 hearings that I attended and spoke at, no.

11 MR. O'CALLAGHAN: Does that include
12 appropriate and inappropriate information or any
13 information at all? Because that kind of leaves it
14 open-ended. It is an open-ended question.

15 MR. PORTNOY: Beyond your --

16 MR. O'CALLAGHAN: You asked if there was
17 any information available that would have helped him
18 he didn't avail himself of and he said no. I just
19 wanted to be sure you were referring to information
20 that's appropriate for him to look at or
21 inappropriate, and if those are distinctions.

22 BY MR. PORTNOY:

1 Q Information of any kind.

2 A Every time I've testified before Congress,
3 I've testified as a representative of my agency, and
4 not, as such, as an individual. I don't know if that
5 clarifies the question or not.

6 Q Just to be perfectly clear, sir, you
7 testified earlier that the transcripts, at least in
8 their unredacted form, contain confidential
9 information?

10 A Yes.

11 Q And that confidential information pertained
12 to criminal referrals?

13 A On Madison Guaranty Savings & Loan, yes.

14 Q Do you have any evidence that that
15 confidential information has been used improperly by
16 anyone?

17 A No, I don't.

18 Q Do you have any evidence that that
19 confidential information has been transmitted or
20 communicated to anyone who might be a subject of the
21 investigation?

22 A No, I don't.

1 Q So do you have any evidence that there was
2 any substantive harm done by the release of that
3 information?

4 A No, I don't.

5 Q Did you discuss with your investigators
6 whether to ask witnesses to maintain confidentiality?

7 A There was a discussion we had, I think, in
8 the whole group, not just with my investigators. I
9 believe that discussion was with Clark Blight and the
10 RTC investigators also.

11 Q And what did you conclude?

12 A I believe that we decided to ask the
13 witnesses to do that, realizing that we could not
14 require them, we obviously weren't a grand jury or
15 anything like that, but I believe we decided to ask
16 the witnesses, realizing that they were under no
17 obligation.

18 Q Were there also discussions as to whether
19 witnesses should be provided with their deposition
20 transcripts to review them for accuracy?

21 A It was agreed that they would be.

22 Q Did you support that decision?

1 A Yes, I did.

2 Q So would it be fair to say that witnesses
3 were provided copies of their deposition transcripts,
4 even though you understood that there was no
5 guarantees that they would necessarily be kept
6 confidential?

7 A Yes.

8 Q And that witnesses had the privilege, if
9 they so chose, to share their transcripts with other?

10 A That's the price you have to pay, yes.

11 MR. O'CALLAGHAN: I object to the word
12 "privilege." He said they had the privilege to show
13 them whoever they wanted to. I am objecting to the
14 word "privilege." If you can rephrase it.

15 MR. PORTNOY: I think your objection is on
16 the record and let it go.

17 BY MR. PORTNOY:

18 Q You testified in your judgment it was
19 contrary to proper investigative methodology for
20 transcripts to be released?

21 A Yes. Prior to the completion of the
22 report.

1 Q Prior to the completion of the report?

2 A Yes.

3 Q Does your office have any kind of formal
4 policy with respect to the release of interview notes
5 or deposition transcripts?

6 A At that point we did not. We have written
7 a special agent handbook within the last year which
8 has addressed some of those things, but at that time
9 we did not have a policy.

10 Q I am afraid it gets harder and harder to
11 find references in these documents.

12 MR. O'CALLAGHAN: Tough light, too.

13 BY MR. PORTNOY:

14 Q Sir, I ask you to look at this document,
15 which is Bates stamped number 444, and I draw your
16 attention to the highlighted portion beginning
17 "limiting." And I ask you just to read that into
18 the record.

19 A "Limiting scope to communications between
20 Treasury and the White House."

21 Q Are these your meeting notes from the June
22 22 staff meeting?

1 A Yes, they are.

2 Q I just wanted to clarify. You testified
3 earlier that, in fact, this phrase did not reflect a
4 limitation on your investigation --

5 A No.

6 Q -- but rather a broadening of your
7 investigation?

8 A This was a definition of our investigation,
9 that our scope was to do the communications between
10 Treasury and the White House.

11 Q And communications was a broader term than,
12 for example, contacts or --

13 A I didn't differentiate. I think the
14 question -- again, the initial discussion back in
15 March, I think we were addressing meetings, and when
16 we got geared up to go, it was no, not just meetings
17 but any communications meaning telephone contacts,
18 faxes back and forth, E-mails, et cetera, and that's
19 what we were talking about with communications.

20 Q So would it be fair to say that the actual
21 scope of the investigation was broader than just
22 addressing meetings?

1 A Yes.

2 Q You testified, sir, that you had concerns
3 about the provision of a draft report or deposition
4 transcripts to the Office of General Counsel of the
5 Treasury Department?

6 A Yes.

7 Q I believe you also testified that
8 Ms. Kerner stated that "they had given their word the
9 transaction scripts would only be used to prepare
10 Secretary Bentsen for his Congressional testimony"?

11 A Yes, I did.

12 Q Shouldn't it be they were?

13 A No. As I said earlier, I think the -- from
14 other conversations, to the best of my knowledge, her
15 contact was Ken Schmalzbach, but I don't know, she
16 did not say Ken Schmalzbach, at least to the best of
17 my knowledge. Ken Schmalzbach assured me that they
18 would only be used; she said general counsel's office
19 said they would only be used, and I didn't pursue
20 that any further.

21 Q Do you have any reason to believe that the
22 Office of General Counsel made any other use of the

1 transcripts than to prepare Secretary Bentsen for his
2 testimony?

3 A Yes, I believe the transcripts were turned
4 over to certainly Roger Altman, and I don't know how
5 many other witnesses, to help them prepare for their
6 testimony before the House committee and the Senate
7 committee.

8 Q Do you have any reason to believe that the
9 Office of General Counsel made any use of the
10 transcripts other than to prepare Treasury Department
11 witnesses for Congressional testimony?

12 A No.

13 Q In your view, was it proper or improper for
14 Secretary Bentsen to use your draft report and the
15 deposition transcripts to prepare for his
16 Congressional testimony?

17 A I think it was proper for him to use our
18 draft report and the depositions for his testimony,
19 yes.

20 Q And why would it have been proper for
21 Secretary Bentsen to use those materials to prepare
22 for his testimony but improper for other witnesses?

1 A Because the Secretary had overall
2 responsibility for the department, and it was his job
3 to -- and our job for him was to find out exactly
4 what happened. He obviously didn't know about 40
5 contacts, whether it was 40 contacts or 20 contacts
6 or anything else. So for him to be able to testify
7 before Congress, he needed to have that information,
8 and that's what we were providing for him.

9 So to have that information, and for him
10 personally to review that, was appropriate. For
11 other witnesses whose actions were accountable,
12 that's very different, for them to have access to
13 everyone else's transcripts, because they're
14 accountable for their individual actions. The
15 Secretary is responsible for the entire department.

16 Q Did any of the communications or contacts
17 you investigated involve Secretary Bentsen?

18 A No.

19 Q You testified earlier, sir, that during the
20 planning stages of your investigation, there was some
21 uncertainty as to whether White House witnesses would
22 appear for sworn depositions?

1 A That's correct.

2 Q Ultimately were there any White House
3 witnesses who declined to appear?

4 A No.

5 Q So would it be fair to characterize that as
6 a problem that never really materialized?

7 A It was a problem early on, but I think it
8 was resolved.

9 Q Sir, I would ask you to look at a document,
10 Bates number 448, which appears to be your notes from
11 June 30, 1994. And I would ask you to look at the
12 highlighted portion.

13 A Okay.

14 Q Would you just read that into the record so
15 that our future readers, if there are any, will have
16 some idea what we are talking about?

17 A The highlighted section says "Jane
18 Sherbourne -- acting as investigator doing a report
19 for OGE."

20 Q According to your notes, who conveyed that
21 information?

22 A Francine Kerner.

1 Q Did Ms. Kerner say that Ms. Sherbourne was
2 doing a report for OGE?

3 A Yes, what I wrote down is what she told
4 me.

5 Q Do you have an independent recollection of
6 what Ms. Kerner said?

7 A As I said, she told me and that's what I
8 wrote down, yes. That's my best recollection.

9 Q Could she have said that Ms. Sherbourne of
10 the White House counsel's office was working with
11 OGE?

12 A That is not what she said.

13 Q There are no quotations marks on your
14 notes, are there, sir?

15 A No.

16 Q Would you characterize this as
17 paraphrasing?

18 A Yes, it is paraphrasing, but there is a
19 significant difference between working with OGE and
20 doing a report for OGE. And I remember that
21 conversation well because Ms. Kerner used the term
22 very often, about if the White House had an inspector

1 general, that's what Jane Sherbourne would be acting
2 as, the inspector general; that was her constant
3 reference in talking about these interviews and how
4 they were to be done, et cetera.

5 Q Did Ms. Kerner, to the best of your
6 recollection, indicate the White House would be
7 preparing a formal written report?

8 A She said they were doing a report for OGE.
9 And that's why there was concern about our
10 interviewing the witnesses and the White House
11 interviewing the witnesses at the same time that this
12 was going on. The Senate Banking Committee was
13 taking deposition from these witnesses, also. So
14 that was a lot of activity. She never said written
15 reports. She said they were doing a report.

16 Q Did you ever discuss with anyone at the
17 White House or the Office of Government Ethics the
18 report that you are referring to in your notes?

19 A I never discussed anything about anyone at
20 the White House, and as far as the Office of
21 Government Ethics, I was subsequently told by Clark
22 Blight that he and Pat Black had a meeting with OGE

1 and they specifically asked if OGE had asked the
2 White House for a report, and they were told no.

3 Q Did Ms. Kerner indicate that the Office of
4 Government Ethics had asked the White House for a
5 report?

6 A No. Her comment was that Jane Sherbourne
7 was acting as an investigator and doing a report for
8 OGE.

9 Q Would it be consistent with your
10 recollection for Ms. Kerner to have indicated that
11 the White House was doing a report that would be
12 submitted to OGE for analysis, much like your report
13 was?

14 A That was the implication, yes.

15 Q Was the implication that Ms. Sherbourne was
16 somehow an agent of OGE or working for OGE?

17 A No. The implication was that she was going
18 to do a report on the White House people for OGE, as
19 I said earlier. And then the RTC people, Clark
20 Blight and Pat Black, said no, that's not true, that
21 OGE had not been told they were getting any report
22 from Jane Sherbourne, and they had not asked for any

1 report from Jane Sherbourne.

2 Q That's not necessarily the same as -- I
3 take that back.

4 Do you have any reason to believe that
5 Ms. Sherbourne was in any way misrepresenting her
6 actions?

7 A I have no way of knowing, because I never
8 talked to Ms. Sherbourne. My concern was that
9 Francine Kerner told me this business when we were
10 discussing access to our interviews, and whether the
11 White House should sit in on our interviews with
12 Treasury and RTC people, and whether they should get
13 transcripts of those interviews. And her reasoning
14 was that Jane Sherbourne was acting as an inspector
15 general for the White House, and therefore, it was
16 proper for us to share, and I disagreed with that.

17 Q You stated that you discussed with
18 Mr. Blight the possibility that the White House was
19 preparing some kind of report.

20 A I relayed the information of what Francine
21 Kerner had told me to Mr. Blight, yes.

22 Q Why did you bring that information to

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1 Mr. Blight's attention?

2 A Because this was a joint investigation, and
3 that was relevant information.

4 Q Why did you consider that to be relevant
5 information?

6 A If we are doing this report, that decision
7 wasn't mine about who sat in on interviews and who
8 didn't sit in on interviews. It is a joint
9 investigation; it is a joint decision. That's why I
10 discussed it with Clark Blight.

11 Q So the subject of the White House report
12 arose in the context of a discussion as to whether
13 White House counsel representatives could sit in
14 during interviews of White House witnesses?

15 A The whole discussion at that time was the
16 interviews of the White House witnesses, how they
17 were going to be done, under what conditions,
18 et cetera, who was going to sit in, whether they
19 could have transcripts. Yes, it was that whole issue
20 that we were discussing at this time.

21 Q You didn't have a separate conversation
22 about whether the White House was investigating or

1 preparing a report?

2 A Separate conversation with whom?

3 Q With Mr. Blight.

4 A I had a lot of conversations with

5 Mr. Blight. Again, to make sure that we were on the
6 same page because we were doing this thing together.

7 Whether it was a separate, just a one-time issue, no,

8 I don't recall that.

9 Q During the course of your investigation,
10 did you ever learn that the White House chief of
11 staff, Mack McLarty, had asked Lloyd Cutler to
12 conduct an investigation of White House-Treasury
13 contacts?

14 A During the course of our -- no, I did not.

15 Q And during the course of your
16 investigation, did you ever learn that Mr. Cutler had
17 asked Ms. Sherbourne to conduct an investigation?

18 A I don't know if it was before Mr. Cutler
19 testified in front of the House Banking Committee or
20 not, that I learned that they were looking into it,
21 that they were doing a review of the White House, and
22 again, whether that was for Mr. Cutler's team, or for

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1 some other purpose, I don't recall exactly what that
2 was, but there was something that Mr. Cutler was
3 doing, yes.

4 Q When Mr. O'Callaghan asked you if you could
5 describe the structure of your investigation, you
6 stated that the information revealed in the course of
7 your investigation, and I quote here, "belonged to
8 both your office and the RTC Inspector General's
9 office." What did you mean by "belonged"?

10 A It is a joint investigation; therefore it
11 was a joint work product in my opinion.

12 Q Anything further?

13 A No.

14 MR. O'CALLAGHAN: Can we take a quick
15 break?

16 MR. PORTNOY: Why don't we go off the
17 record.

18 (Discussion off the record.)

19 BY MR. PORTNOY:

20 Q Mr. Cottos, I am handing you a document
21 which is Bates stamped numbers 916 through 919 and it
22 is a letter that I believe you previously identified

1 as having been sent from Francine Kerner to you on
2 the 21st of July?

3 A That's correct.

4 Q I believe the fax line shows that it was
5 delivered at about 12:30 in the morning on the 21st?

6 A That's when it was sent, yes.

7 Q Excuse me, sent. Which, if I understand
8 correctly, would indicate that it was sent
9 essentially the night of the 20th and the morning of
10 the 21st?

11 A That is correct.

12 Q I am trying to get sequence correct here,
13 because you also had a meeting on the 21st of July?

14 A Yes.

15 Q And I want to be certain which occurred
16 first.

17 A Okay. This was sent first.

18 Q You characterized this letter as containing
19 Ms. Kerner's comments on the first draft of the
20 report?

21 A Yes, I did.

22 Q I believe you also stated that Ms. Kerner

1 viewed the first draft as not entirely accurate?

2 A That's correct.

3 Q And this document reflects Ms. Kerner's
4 effort to correct what she perceived to be the
5 problems or the deficiencies?

6 A That's correct.

7 Q When did you receive the letter?

8 A On the morning of July 21, probably when I
9 got in the office sometime between 6:30 and 7:00.

10 Q Did you provide a copy to Mr. Cesca as
11 well?

12 A I think that a copy had been faxed to him.
13 No, I didn't give it to Mr. Cesca, because he --
14 again, you have to understand, the Inspector
15 General's Office, Mr. Cesca's office and Ms. Kerner's
16 office are up at main Treasury, which is at 15th and
17 Pennsylvania, and my office is in the ICC building
18 which is 12th and Constitution, so it was not a
19 matter of walking down the hall and saying Bob, here
20 it is. There are four blocks in between, so.

21 Q The geographic difference is appreciated or
22 the explanation of the geographic difference.

1 A That's why -- I don't know if Francine sent
2 a copy to him also, but I did not give him this
3 copy. This was used as our working copy.

4 Q What did you do with the letter when you
5 first received it?

6 A I showed it to the two investigators and my
7 deputy, and we sat down and started looking,
8 comparing these comments to the draft.

9 Q Did you have a general impression regarding
10 the comments?

11 A I was concerned about some of the comments,
12 yes.

13 Q Were you concerned that they were
14 inaccurate?

15 A I was concerned -- I don't know if
16 inaccurate is correct. I think they were headed in a
17 certain direction, rather than just stating the
18 facts, which our whole intent was to stay with the
19 facts. We had an easy report to write in the sense
20 that since we did have transcripts, written
21 transcripts of everyone, you didn't have to go back
22 to an interview report and try to portray what

1 someone had said, you had an actual deposition under
2 oath, boom, this is what they said, what happened at
3 this meeting, here it was. You could lift that out
4 and put it in here, you didn't have to speculate.
5 You didn't really have to paraphrase.

6 Q So, would it be fair to say your objection
7 was at least in part that the comments were somehow
8 interpretive?

9 A Yes.

10 Q But you reviewed and considered the
11 comments?

12 A Yes, we did.

13 Q Did you incorporate some of them into the
14 draft?

15 A Yes, we did.

16 Q Did you reject others?

17 A Yes, we did.

18 Q Did anybody from outside your office in any
19 way pressure you to accept or reject any of her
20 comments?

21 A No.

22 Q Did you make those decisions internally?

1 A Well, what -- internally, again, we get
2 back to the large group that ended up reviewing the
3 report. Initially, when we got this, yes, it was
4 within our group for the drafting purpose. We were
5 preparing to go over to RTC to discuss the draft with
6 them.

7 Q Before we get to the RTC --

8 A Certainly.

9 Q -- you said "our group," could you explain
10 what that encompasses?

11 A The Treasury Office of Inspector General,
12 that was my deputy and the two investigators, Fred
13 Coco and Dan O'Rourke.

14 Q So the four of you had the lead in drafting
15 the report?

16 A In the initial draft, yes.

17 Q Do you recall who had actual possession of
18 the computer disk on which the report was stored?

19 A We did. Treasury OIG did.

20 Q Do you remember which individual?

21 A Probably Fred because he is the most
22 computer literate of the four of us. That's Special

1 Agent Coco.

2 Q But not Ms. Kerner?

3 A No. She never had the disk, to my
4 knowledge.

5 Q The four of you, meaning Mr. Coco, you,
6 Ms. Cesario, and?

7 A Mr. O'Rourke.

8 Q Mr. O'Rourke who is also one of the
9 investigators?

10 A That's correct.

11 Q Considered these comments and then accepted
12 some and rejected others?

13 A Yes, and I believe that I faxed this over
14 to Clark Blight, also. But I can't -- I am not sure
15 if I did or not. I know we talk about it, but -- and
16 I believe we were -- that's what we were doing at
17 that time, was faxing back and forth, so we will fax
18 to them, they would fax comments over, rather than us
19 being together. And when we finalized it, we all got
20 together, but at this point we were faxing back and
21 forth, so I believe I faxed this over to RTC.

22 Q Did you subsequently discuss this letter

1 with Ms. Kerner?

2 A Yes.

3 Q Was that face to face?

4 A Yes.

5 Q Was anyone else present?

6 A Mr. Cesca, Raisa Cesario, and Fred Coco and
7 Ben Kramer who was a student intern or co-op. He was
8 helping us last summer, and he was present for that
9 discussion also.

10 Q Did you express to Ms. Kerner an opinion as
11 to the propriety of her sending you the proposed
12 changes?

13 A Yes.

14 Q Would you repeat what that opinion was?

15 A I was concerned about what I felt was a
16 slant, as I said earlier, during the course of the
17 discussion, that I made the comment that this was not
18 the Jean Hanson defense team.

19 Q Ms. Kerner objected to that
20 characterization --

21 A Yes, she did.

22 Q -- did she not?

1 A Yes, she did.

2 Q Did anybody else express any views with
3 respect to your characterization?

4 A Mr. Cesca was concerned about the
5 disagreements. He said let's get on with it,
6 basically. He did not want us going back and forth,
7 but trying to concentrate on the report so he didn't
8 say he agreed or disagreed, he just said let's get
9 back to the report basically.

10 Q Would it be fair to say that you didn't
11 like getting this letter?

12 A No, I don't think that that was the
13 problem, in receiving it. I think I was concerned
14 about the contents of it.

15 Q So you didn't object to Ms. Kerner
16 commenting on the report?

17 A No. Well, once it was established that she
18 would be involved in the report, as I stated earlier,
19 I didn't feel that she should be involved in the
20 interviews or the report because of her reporting
21 chain, but I was told that, despite my objection,
22 that she would be involved, so, past that, no.

1 Q Did you in any way consider that letter to
2 be an attack on the work that you and your
3 investigators had done?

4 A No, because it was a draft and it was a
5 first draft of 26 interviews covering 40 contacts, so
6 I didn't expect the first draft to be totally ready
7 to go and a final product. So no, I didn't take it
8 as an attack. My skin isn't that thin.

9 Q What specifically in this letter, if
10 anything, led you to characterize Ms. Kerner as part
11 of the Jean Hanson defense team?

12 A The Dennis Foreman comments, I think was
13 the -- probably the -- the kicker, I guess you can
14 call it. As far as I was concerned, the relevance of
15 the two-minute conversation as opposed to a legal
16 opinion -- again, having been in this business a long
17 time, I understand what a legal opinion is, and there
18 is a significant difference between a two-minute
19 review of the document on the way to a meeting and a
20 legal opinion where you sit down and are able to
21 research the issues and come up with an opinion. And
22 I think the statement that really got me upset at

1 that meeting was when she made the statement that the
2 two-minute review should be eliminated, that the two
3 minutes was completely irrelevant. And I felt very
4 strongly that that was very relevant.

5 Q Why, in your view, did she said want to
6 remove the reference to the two minutes?

7 A Why did I --

8 Q Why, in your view, did she want to remove
9 the reference?

10 A Because I think there is a very different
11 opinion -- if Jean Hanson were to say that she gave
12 this document to Dennis Foreman for him to do the
13 research, and say it is an ethical issue, that it is
14 not a problem rather than -- there is a significant
15 difference between that and passing someone in the
16 hallway and saying do you have a problem with this.
17 And to me, that certainly is a reflection of Jean
18 Hanson's activities; that's the way I interpret it.

19 Q So you believe that the two-minute
20 reference was relevant?

21 A Yes, I did.

22 Q Your statement to Ms. Kerner is fairly

1 strong. Was it your view at the time that Ms. Kerner
2 was acting as defense counsel for Ms. Hanson?

3 A I felt that several of the comments she
4 made were leaning in that direction, to try to
5 protect Ms. Hanson with this report, and that was
6 obviously of concern to me, for me to make such a
7 comment.

8 Q Did you discuss with anyone else your view
9 that Ms. Kerner was seeking to protect Ms. Hanson?

10 A The only other person that I would have --
11 I may have said that to -- and I don't recall whether
12 I did or not -- would have been Clark Blight, again,
13 because he was involved in this as a joint
14 investigation.

15 Q In your view, did anything Ms. Kerner did
16 or said prevent you from adequately investigating
17 Ms. Hanson's conduct?

18 A No.

19 Q Did anything anyone said or did prevent you
20 from adequately investigating Ms. Hanson's conduct?

21 A No.

22 Q Do you recall what Ms. Kerner said to you

1 in response to your statement?

2 A Her exact words, no, other than that she
3 wasn't particularly happy with that comment and
4 didn't think that it was truthful. I don't recall
5 her exact response, no.

6 Q Do you recall if she was angry?

7 A Oh, yes, she was angry.

8 Q But you don't remember anything that she
9 might have said?

10 A No, I don't. Not a quote, no.

11 Q In substance though, she denied that she
12 was defending Ms. Hanson, did she not?

13 A That's an accurate statement, yes.

14 Q And nobody else made any substantive
15 comments?

16 A No, no one else that was in the room.

17 Q You stated that on one or more occasions,
18 one of your investigators told you that a lawyer had
19 sought to limit their questioning?

20 A Yes.

21 Q Were the lawyers private lawyers or
22 government lawyers?

1 A Private lawyers.

2 Q Did any government lawyer ever try to limit
3 your questioning?

4 A No.

5 Q These were private counsel representing
6 their individual clients?

7 A That's correct.

8 Q Did you view it as appropriate for
9 Ms. Kerner to have been engaged in discussions with
10 counsel, private counsel, for the witnesses?

11 A Given the role that was approved by the
12 Inspector General, yes. However, I felt that if she
13 was going to make any deals or any agreements of that
14 nature, that we should have been told. And my
15 concern was that we were not told, so if there was a
16 discussion with a particular attorney about a
17 particular witness, and there was an agreement
18 reached about this particular area of questioning is
19 off limits, that should have been relayed to us, and
20 it was not.

21 Q Do you remember which witnesses?

22 A I think it was probably the White House

1 witnesses. And I think, again as I stated this
2 morning, it was concerning information, where it went
3 after it was given from the Treasury employee to the
4 White House employee, where it went from there.

5 I believe that was most of the discussion.

6 Q I believe you also testified that you
7 viewed the scope of your investigation as properly
8 limited to the initial contact between officials of
9 the Treasury Department and White House personnel?

10 A Yes, I did.

11 Q So you would have agreed that it was beyond
12 the scope of your investigation to inquire into these
13 second generation contacts?

14 A Yes, I did.

15 Q So your concern involved consultation
16 rather than substance?

17 A It regarded telling us what those
18 discussions were, and what the results were rather
19 than having an agent in an interview ask a question,
20 and then be told by the attorney representing the
21 witness we have an agreement with Ms. Kerner that you
22 won't ask any questions in that line. That very much

1 concerned the investigators, that if there was some
2 kind of deal, any kind of agreement -- deal is really
3 the wrong word. That sounds terrible and it is the
4 wrong word.

5 If there was any agreement reached on areas
6 not to be covered, it should be relayed to me so I
7 could relay it to the investigators, this has been
8 discussed and agreed upon that this is an area that
9 we will not get into.

10 And that was one of the rubs, was it was
11 not relayed to us, it wasn't given to me so I
12 couldn't give to the investigators, therefore when it
13 came up during the course of an interview, it was not
14 received very favorably by the investigators.

15 Q Would it be fair to say you and Ms. Kerner
16 had a relatively strained relationship during this
17 investigation?

18 A I think that's a fair statement, yes.

19 Q Would it be fair to say the nature of that
20 relationship may have impeded communication between
21 you?

22 A That's probably a fair statement.

1 Q And would it be fair to say that
2 information that didn't get conveyed back and forth
3 may not have gotten conveyed in part because neither
4 one of you much looked forward to conversations with
5 each other?

6 A That's a fair statement.

7 Q I would like you to look at document number
8 367, which is a copy of an E-mail from you to
9 Francine Kerner on July 19, of 1994, the time is 7:35
10 a.m. And I would ask you to look at the portion
11 that's highlighted in yellow and read it into the
12 record, if you would.

13 A "I think we should give the transcripts of
14 the White House people to their attorneys, and Jane
15 can negotiate with them."

16 Q Who is Jane?

17 A Jane Sherbourne of Lloyd Cutler's staff at
18 the White House.

19 Q When you say "Jane can negotiate with
20 them," do you mean by that that she can negotiate
21 with counsel for the witnesses whether to provide her
22 with access to their depositions?

1 A I have no control over the depositions once
2 they go to the witnesses, and if the witnesses choose
3 to give them to Jane, I have no control over that.
4 And that's what I was saying, yes, that if the
5 witnesses choose to give them to Jane, I can't stop
6 that.

7 Q Did you ever express to anyone a desire to
8 tell Jane Sherbourne that she shouldn't seek the
9 depositions? I know you have said previously that
10 you have never spoken directly with Jane Sherbourne.

11 A That's correct.

12 Q Did you ever ask anyone else to speak to
13 her on your behalf and tell her that she should not
14 seek the depositions?

15 A Well, I told Francine Kerner several times
16 what she should tell Jane Sherbourne about the
17 transcripts and this was the last, I guess, of our
18 conversations, this was the last E-mail. But yes,
19 several times I expressed my opinion about the
20 transcripts and what should be relayed to Jane
21 Sherbourne.

22 Q And did you ever specifically ask

1 Ms. Kerner to tell Ms. Sherbourne that the White
2 House should not seek the transcripts from the
3 witnesses themselves?

4 A No, I didn't tell her that. No, I did not
5 tell Francine Kerner to do that. I was offended by
6 the E-mail that I was responding to, because of --
7 and I don't know if you have it, from the day before,
8 where it was asking about -- I think the E-mail from
9 Francine to me said Jane Sherbourne would like the
10 transcripts to compare with theirs to look for
11 inconsistencies.

12 And I was very offended by that, since, to
13 my knowledge, they had not written anything, didn't
14 have any interview reports, again, as I said this
15 morning. So to compare their oral briefings with our
16 sworn depositions, I thought was pretty preposterous,
17 and that was what I was expressing here.

18 Q But it was up to the witnesses themselves
19 to decide what do with their transcripts once they
20 got them?

21 A I had no control over what they did with
22 them once they got them.

1 Q You had preferences?

2 A I absolutely had preferences.

3 Q But you knew witnesses were getting their
4 own transcripts?

5 A That's correct.

6 Q And you knew you had no control over what
7 they would do with them?

8 A That's correct.

9 Q So you knew that once witnesses got their
10 own transcripts, there was a fair likelihood --

11 A There was a possibility that they would
12 share them. Yes.

13 Q Mr. O'Callaghan asked you earlier about a
14 wire story of the Associated Press. And in that wire
15 story there was reference to your having made written
16 objection to the release of the transcripts.

17 You testified, I believe, that the only
18 written objection you registered was in the form of
19 an E-mail on the 19th --

20 A That's correct.

21 Q -- of July?

22 A That's correct.

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1 Q Is the E-mail we were just discussing Bates
2 stamped number 367 the E-mail to which you were
3 referring?

4 A Yes.

5 Q Have you ever spoken with anybody from the
6 media about your investigation?

7 A No, I have not.

8 Q Has anyone from the media ever attempted to
9 contact you regarding your investigation?

10 A Last year someone did. In fact, when I saw
11 that, when Mr. O'Callaghan showed it to me, I had
12 never seen that AP story before this morning.

13 Q Do you have any idea who the authors of
14 that article, author or authors of that article might
15 have spoken with?

16 A I don't know who wrote the article so no, I
17 have no idea who they spoke to.

18 Q Were you aware of anyone in your office who
19 spoke to the media about this investigation?

20 A I don't think anyone in my office spoke to
21 the media about the investigation.

22 Q Are you aware of anyone in the RTC office

1 of the IG who spoke to the media about the
2 investigation?

3 A No.

4 Q Have you heard any rumors?

5 A No, I haven't.

6 (Witness conferred with counsel.)

7 THE WITNESS: By that office, I meant the
8 office of investigations; I don't mean the Office of
9 Inspector General. I can't state that no one in the
10 Office of the Inspector General talks to the press.
11 I can only say that I don't believe anyone in the
12 office of investigations spoke to the press.

13 BY MR. PORTNOY:

14 Q Do you have any reason to believe
15 investigative staff outside the Office of Inspector
16 General spoke to the press?

17 A No, I don't.

18 Q Where do you think they got the information
19 that you had created some kind of writing opposing
20 release of the deposition transcripts?

21 A I have no idea. I don't talk to the press
22 during pending investigations, whether it be criminal

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1 or any other kind. That's fairly dangerous
2 business.

3 Q Have you ever told anyone that you objected
4 in writing to the release of the transcripts?

5 A My staff and RTC would be the only ones, no
6 one outside of that.

7 Q Could you be more specific?

8 A Okay. As I said earlier, my staff knew how
9 I felt about it. The office of investigations, Bob
10 Cesca knew about it, and the RTC, probably the
11 investigators, and Blight also knew how I felt about
12 it.

13 Q I am not asking who knew how you felt; I am
14 asking whether you told anybody that you had objected
15 in writing to the release of the transcripts?

16 A My staff at the office of investigations
17 knew that I had, and I believe --

18 Q That you had objected in writing?

19 A That I had objected in writing, yes, they
20 were aware of that. I don't even know if Clark
21 Blight and the RTC people knew that I objected in
22 writing, to tell you the truth. I mean I didn't copy

1 them, normally, on my E-mails or anything, so I don't
2 believe that they even knew that I did it in
3 writing.

4 Q Mr. O'Callaghan showed you a copy of a fax
5 that you sent to Mr. Blight on the 25th of July, on
6 the cover of which you made reference to the
7 Secretary's review team, and that's a quote.

8 A Yes.

9 Q You testified earlier that the Secretary's
10 review team was Francine Kerner?

11 A The comments I got were from Francine
12 Kerner, yes. I sarcastically wrote Secretary's
13 review team.

14 Q Do you have any information that there was
15 any team in existence that reviewed the drafts on
16 behalf of the Secretary?

17 A Did I have any evidence to that effect, no,
18 I did not. Did I have suspicions, yes, I did.

19 Q What was the basis of your suspicion?

20 A The basis was the fact that we had issued
21 the draft report on the 22nd, and then we got these
22 comments back, and they were different from the

1 comments that Francine Kerner had had when we had
2 first talked about the draft, when we issued the
3 draft. So that was my concern, that suddenly there
4 were differences. I didn't know where those comments
5 came from. I received them from her, and I passed
6 them on.

7 Q But you don't know who the source of the
8 other comments might have been?

9 A No, I don't.

10 Q There was no entity in existence, to your
11 knowledge, called the Secretary's review team, was
12 there?

13 A Not to my knowledge, no.

14 Q Would it be fair to say that this fax
15 reflects your unhappiness with Ms. Kerner's continued
16 role in the investigation?

17 A That's an accurate statement. Yes.

18 Q The decision for Ms. Kerner to remain
19 involved in the investigation was made by Mr. Cesca,
20 was it not?

21 A Yes, it was.

22 Q Mr. Cesca was your superior?

1 A Yes, he was.

2 Q So it was his decision?

3 A That's correct.

4 Q Was it appropriate for you to be raising
5 your objections to your superior's decision with
6 someone outside your office?

7 A Was it appropriate? In a joint
8 investigation, yes. For me to call someone up on an
9 investigation that they have nothing to do with, I
10 think it would be totally inappropriate.

11 Mr. Blight and I had talked throughout
12 this, again, because of the concerns that he had
13 raised about Ms. Kerner's involvement, so in this
14 particular case, this was a continuation of the
15 dialogue, not just a shot in the dark or, you know,
16 an un-called-for comment to a neutral party or
17 anything like that.

18 Q Did you have any concern that you were
19 undermining Mr. Cesca's authority by complaining
20 about his decisions to someone who works outside your
21 office?

22 A No, everyone involved in the investigation

1 knew whose decision it was and knew that we were
2 going forward and we were making the best of the
3 situation. There was no secret about who had
4 approved Ms. Kerner's involvement or anything like
5 that.

6 Q As a general proposition, in your view,
7 would it be appropriate for to you discuss personnel
8 decisions made in your office with someone outside
9 your office?

0 A If they were not involved in the
1 investigation, it would be totally inappropriate. If
2 it is a joint investigation, and they have something
3 at stake and it is their work product, I think it is
4 totally appropriate.

5 Q Would it be correct to say that Mr. Blight
6 shared your opinion of Ms. Kerner's participation?

7 A I believe he did.

8 Q Would it be fair to say that your
9 conversations with Mr. Blight or the openness of your
0 conversations with Mr. Blight reflect the fact that
1 you, as you testified earlier, had a 12-year
2 friendship?

1 A No, I think the conversation with
2 Mr. Blight reflects that we were in this together,
3 that we were working through this.

4 You talked about my comments undermining
5 the investigation. I don't think it did undermine.
6 I think that we overcame, in my mind anyway, all of
7 those obstacles, and Ms. Kerner's involvement, to get
8 a product that we were all very happy with.

9 Q I believe, sir, what I asked you was
10 whether your comment undermined Mr. Cesca's
11 authority --

12 A No.

13 Q -- not whether it undermined the
14 investigation.

15 A I'm sorry, I don't think it undermined his
16 authority or the investigation.

17 Q So you didn't perceive yourself to have an
18 obligation to follow the party line on this issue,
19 the party line being the one established by your
20 boss?

21 A I felt the obligation I had was to be
22 honest about how I felt about it. If Clark Blight

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1 said how do you feel about Francine Kerner being
2 involved, I was not going to say I think it is a
3 great idea that she is involved. I had made my
4 position known, and as I said, the fact that she was
5 involved, we would go forward and do the
6 investigation, all of us, fighting to get the best
7 product possible, which I think we did.

8 Q Would you say that you accepted Mr. Cesca's
9 decision?

10 A Yes, I did.

11 Q Could you say that comments like
12 "Secretary's review team" are consistent with having
13 accepted his decision?

14 A That was some sarcasm involved, yes.

15 MR. O'CALLAGHAN: What does the comment
16 regarding the Secretary's review team have to do with
17 him accepting Mr. Cesca putting Ms. Kerner on the
18 case?

19 MR. PORTNOY: I think the record speaks for
20 itself. I will be happy to discuss it with you
21 later.

22 MR. O'CALLAGHAN: It seems like a confusing

1 question to me, perhaps somewhat misleading, a
2 comment indicating he didn't accept the decision.

3 BY MR. PORTNOY:

4 Q I ask you to look at a document marked
5 Bates number 3770 and read the highlighted portion,
6 please.

7 A "I believe that we should make the
8 decision, since the White House released documents
9 and somewhat violated our agreement, we should decide
10 when and if the documents should be returned."

11 Q Could you identify that document, please?

12 A That is a interoffice memorandum, E-mail,
13 from me to Francine Kerner, sent October the 4th,
14 1994 at 10:42 a.m.

15 Q In that E-mail, you characterize the White
16 House as having, I believe, "somewhat violated" your
17 agreement?

18 A Yes, I had.

19 Q Did you have any personal role in
20 negotiating the agreement with the White House
21 concerning the use of the depositions?

22 A No, I did not.

1 Q Do you have any personal role in
2 establishing the terms of that agreement?

3 A No, I did not.

4 Q Did you have any role in drafting the
5 letter to the White House delineating the agreement?

6 A No, I did not.

7 Q Did you have any personal knowledge of the
8 negotiations that led to the agreement?

9 A No, I did not.

10 Q Did you have any personal basis, other than
11 the letter itself, to know what the agreement
12 contemplated or didn't contemplate?

13 A I had a copy of the agreement, the letter
14 of agreement. Yes, that's what I said I had. I did
15 not have the background or the history.

16 Q So, your conclusion that the White House
17 might have violated the agreement was based entirely
18 on your reading of the letter?

19 A My reading of the letter and the following
20 events, the fact that Mr. Cutler stated that he had
21 used those transcripts, contrary to what it says in
22 the letter, not to do just his own testimony, but to

1 reconcile inconsistencies with White House
2 witnesses.

3 Q But your understanding of the terms of the
4 so-called agreement between the Treasury Department
5 and the White House comes entirely from the text of
6 the letter; is that correct?

7 A Yes, it does.

8 Q To your knowledge, did Francine Kerner have
9 a role in negotiating the terms of the agreement?

10 A I don't know who negotiated the terms of
11 the agreement.

12 Q Do you know whether Ms. Kerner played any
13 role at all in communicating between the Treasury
14 Department and the White House with respect to this
15 agreement?

16 A Yes, I do.

17 Q What role did she play?

18 A On July the 25th, when Mr. Cesca told me
19 about the release of the transcripts, he told me that
20 he had received a call on Saturday about releasing
21 the transcripts to the White House, and he had a
22 three-way conversation between he, and Francine

1 Kerner and Steve McHale, where that discussion took
2 place, and during that discussion is when he agreed
3 to release the documents to the White House. But he
4 did tell me that Ms. Kerner was involved in the
5 discussions, yes.

6 Q So Ms. Kerner was involved in the actual
7 discussions whereby the department decided to release
8 the documents to the White House?

9 A Yes, that's correct.

10 Q Would you agree then that Ms. Kerner was
11 probably in a better position than you to know what
12 the terms of the agreement with the White House were?

13 A I think I could read the agreement. I
14 think it was pretty straightforward in the letter.
15 And if there was another agreement -- because I was
16 very concerned and when they told me about the
17 release of the transcripts, and that it was covered
18 by this agreement, I was -- we discussed that
19 agreement, and it was very clear from that discussion
20 and from that letter that there was only one purpose
21 for those documents, and it was not to reconcile any
22 inconsistencies in White House testimony. It was

1 strictly for Mr. Cutler's testimony.

2 Q My question, sir, was whether it would be
3 fair to say that Ms. Kerner, having participated in
4 the discussions that led to the agreement, would be
5 in a better position than you to know what the terms
6 of the agreement were intended to be?

7 A I agree.

8 Q I now ask you to look at a document
9 numbered 363 and to identify it for the record,
10 please.

11 A It is an E-mail, interoffice memorandum,
12 from Francine Kerner to me, with a copy to Bob Cesca,
13 dated -- it says in writing 10/4/94.

14 MR. PORTNOY: For the record I put all of
15 the documents before and after this one, in apparent
16 E-mail sequence, so that handwritten notation is
17 mine, but I believe it to be accurate.

18 MR. O'CALLAGHAN: It is an estimation of
19 when it occurred.

20 MR. PORTNOY: Yes.

21 BY MR. PORTNOY:

22 Q Would you read the highlighted portion.

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1 A The highlighted portion says, "I am not
2 aware of any White House violation of the
3 Department's agreement."

4 Q So it was Ms. Kerner's view that the White
5 House had not violated the agreement?

6 A That's correct.

7 Q I would ask you, Mr. Cottos, to look at a
8 document numbered 453 which appears to be your
9 handwritten notes from July 5, 1994, and to read, if
10 you would, the highlighted portion.

11 A "Senate committee wants our report
12 including interviews by 7/20/94."

13 Q Do you recall the source of this
14 information?

15 A I could tell you exactly if I had page 1 of
16 this document. I believe it was a meeting at main
17 Treasury with Francine Kerner and Bob Cesca.

18 Q Is this the first page of that document,
19 the one marked 452?

20 A Yes, it is. And that was a meeting at main
21 Treasury with Jack Adair, Steve Switzer, Pat Black,
22 Clark Blight, Bob Cesca, Francine Kerner and myself.

1 Q Do you recall who made the statement that
2 the Senate wanted your report by the 20th of July?

3 A I believe Bob Cesca made that statement.

4 Q Do you know where Mr. Cesca got that
5 information?

6 A I believe that it was from the Secretary's
7 office, stating that they would like to have it done
8 before the Secretary had to testify.

9 Q Sir, that's slightly different from what
10 your notes say, and that's what I was hoping you
11 could illuminate for us, because your testimony
12 indicates that Secretary Bentsen wanted the report
13 prior to his testimony, whereas your notes indicate
14 that the Senate committee itself wanted the report.

15 A I think the answer is both. My notes say
16 "the Senate committee wants our report including
17 interviews by 7/20." I believe somewhere else, in
18 some other notes, there is a date that we talked
19 about, about the Secretary wanting it by 7/20/94
20 also, yes. So both people wanted it by 7/20 and that
21 was our initial goal, to have it done by July 20th.

22 Q So your goal was to have the report

1 finished by 7/20, July 20th, to satisfy two
2 audiences --

3 A That's correct.

4 Q -- Secretary Bentsen and the Senate Banking
5 Committee?

6 A That's correct.

7 Q Thank you, sir.

8 So you understood then, from the first,
9 that your report would be used in connection with at
10 least Secretary Bentsen's testimony to Congress?

11 A Yes, I did.

12 MR. PORTNOY: Off the record for one
13 minute.

14 (Discussion off the record.)

15 BY MR. PORTNOY:

16 Q In closing, Mr. Cottos, was it your view at
17 the time that your investigation was complete? At
18 the time of the completion of your investigation, was
19 it your view that it was a complete investigation?

20 A Yes, it was.

21 Q Was it your view that it was an accurate
22 investigation?

1 A Yes, it was.

2 Q Was it your view that that it was an
3 impartial investigation?

4 A Yes, it was.

5 Q Did anybody in the Department of Treasury
6 or the Administration in any way try to influence the
7 conclusions you reached?

8 A No, they did not.

9 Q Did anybody try to limit the subjects you
10 addressed?

11 A No, they did not.

12 Q Did anybody suggest to you that there were
13 any categories of wrongdoing or violations that you
14 should not pursue?

15 A No, they did not.

16 Q Does it continue to be your view that your
17 investigation was accurate?

18 A Yes, it is.

19 Q And thorough?

20 A Yes.

21 Q And impartial?

22 A Yes.

1 Q And complete?

2 A Yes.

3 MR. PORTNOY: That's all I have. Thank
4 you, sir.

5 Off the record.

6 (Discussion off the record.)

7 MR. O'CALLAGHAN: Back on the record.

8 EXAMINATION

9 BY MR. O'CALLAGHAN:

10 Q Mr. Cottos, you testified earlier that you
11 had suspicions that there might be a person or a
12 group of persons working on the draft of the report
13 for the Secretary; is that correct?

14 A I'm sorry, could you rephrase that?

15 Q Sure. Earlier, when I showed you the fax
16 cover page which you put in a reference --

17 A Secretary review team.

18 Q Secretary review team?

19 A Yes.

20 Q And Mr. Portnoy was asking you questions
21 regarding that comment, you mentioned that you had
22 suspicions that there was at least one person or a

1 group of persons that might have been working on the
2 draft report for the Secretary; is that correct?

3 A I had concerns that someone other than
4 Francine Kerner had looked at the draft, because she
5 had been involved in the preparation of the draft,
6 and those comments were not present during those
7 discussions, and they were present after we issued
8 the draft.

9 Q Okay. Earlier I showed you a document,
10 014895 -- looks like an 8 -- which is a memo dated
11 July 29, from Peter Rittling to Ken Schmalzbach,
12 which talks about "Inspector General incorporating
13 many of our recommended changes in the final
14 chronology."

15 Does this document affect your opinion as
16 to whether there might have been a group of people
17 working on the draft for the Secretary?

18 A Based on this document, it appears that
19 whoever, Peter Rittling, has reviewed the documents
20 and made some comments, yes.

21 Q And I would like you just to look at the
22 substance of the document. And look at the portion

1 of the document which refers to changes that were
2 made in the final version, whether any of those are
3 similar to the versions that you referred to or that
4 you saw in the July 25th fax?

5 A I couldn't tell you. I don't remember what
6 was in the July 25th fax. And again, this report
7 took many forms from the initial draft to the final
8 product. So I can't -- I couldn't state what was
9 included where, when it changed.

10 Q That's fine.

11 Mr. Portnoy asked you whether you thought
12 that Ms. Kerner believed that the White House
13 violated the agreement with regard to the transcript,
14 and you testified that you believed that she did not
15 think that the agreement was violated; is that right?

16 A She wrote that in an E-mail to me, that she
17 did not feel the White House had violated the
18 agreement, yes.

19 Q And had Ms. Kerner, previously to that,
20 advocated releasing the transcripts to the White
21 House?

22 A She had asked me several times about

1 releasing the transcripts to the White House.

2 Q Previous to July the 23rd?

3 A Yes.

4 Q Did the White House ever prepare -- to your
5 knowledge, prepare a report on White House Treasury
6 contacts?

7 A Not to my knowledge.

8 Q During the investigation, did you have any
9 contact with anyone at Treasury named Ed Knight?

10 A No, I did not.

11 Q Do you know Ed Knight?

12 A I know who he is, yes.

13 Q Who is Ed Knight?

14 A He is the general counsel for the
15 Department of Treasury now.

16 Q Did he have any involvement in the
17 investigation?

18 A Not to my knowledge.

19 Q You met with Bob Cesca and Francine Kerner
20 on July 25th; is that right?

21 A I would have to look at my notes to -- wait
22 a minute. July 25th. Yes, that was the meeting when

1 I was told about the transcripts being given to the
2 White House, yes.

3 Q Did Bob Cesca tell you how he came to turn
4 the transcripts over to the White House?

5 A What he told me was that he had received a
6 call about releasing the transcripts, and that he had
7 ultimately had a three-way conversation with Francine
8 Kerner and Steve McHale, and had made the decision.

9 My first response to him was did you talk
0 to the Secretary directly and he said no, I received
1 word from Ed Knight.

2 Q The first question I have is who did he
3 first hear -- what was the first phone call he had
4 and who was it with?

5 A That I don't know. What I related to you
6 is what he told me, that there was a phone call. He
7 had initially said no. He got a --

8 Q Did he tell you what time of day that phone
9 call came?

0 A I believe he said that he was at a swim
1 meet for one of his sons so it was probably late
2 morning, but I don't know for sure.

1 Q Did he say -- did he call in for the
2 message or was he paged?

3 A He was paged and he received a voice mail
4 from Ed Knight, but when he called back, Ed Knight
5 was gone, and that's when he spoke to Steve McHale
6 and Francine Kerner.

7 Q Did he tell you about the substance of
8 those discussions?

9 A Basically the discussion was about the
10 release of the transcripts to the White House.

11 Q Did he relate to you what each individual's
12 views were on that subject?

13 A No, he didn't. He just said the decision
14 was made.

15 Q Was it a decision made by all three people?

16 A He just said -- that was his decision. I
17 mean he was the Inspector General, that was his
18 decision, so that was the discussion. I can't ask
19 him whether there was a vote taken or anything like
20 that.

21 Q Did he receive a call from Ed Knight after
22 the three-way conversation or had he already received

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1 the call from Ed Knight?

2 A To the best of my knowledge, he got voice
3 mail from Ed Knight before the three-way
4 conversation.

5 Q And do you know where the voice mail was
6 left; was it at the office or home?

7 A I don't know.

8 Q Did Mr. Cesca consult with anyone else at
9 Treasury before releasing the transcripts other than
10 Mr. McHale or Ms. Kerner?

11 A Not to my knowledge.

12 Q Did the Senate Banking Committee ever make
13 a formal request for the report in June or July of
14 1994?

15 A We had a meeting around the first of July,
16 with the Senate Banking Committee. And at that
17 point, they gave us their schedule, of -- they said
18 they were going to start depositions on July 11, and
19 then they told us that they requested our report at
20 that meeting.

21 Q Did you feel like -- who attended that
22 meeting?

1 A Francine Kerner, Bob Cesca and myself.

2 Q How about for the Senate?

3 A I think it was Bill Codinha, and probably
4 three other people. I don't have the list. I don't
5 have my notes from that meeting.

6 Q Did you think it was strange that Bob Cesca
7 insisted on leaving Francine Kerner on the
8 investigation?

9 A Did I think it was strange? No.

10 Q You already said you thought it was
11 inappropriate; right?

12 A Yes, I did.

13 Q Was there anyone at the Office of Inspector
14 General that thought it was inappropriate to turn
15 over the transcripts?

16 A The office of investigations staff all felt
17 the same way that I did.

18 Q How do you know that?

19 A From our discussions.

20 Q So you had specific discussions with all
21 the members of your staff?

22 A Not all the members of my staff, but two

1 investigators and my deputy.

2 Q Was there information in the transcripts
3 that indicated that the Clintons might be more than
4 just witnesses in criminal referrals?

5 A I can't answer that. I don't recall
6 exactly what information about the referrals was in
7 the transcripts.

8 Q What is Francine Kerner's position, current
9 position? Is she still at Treasury IG?

10 A She is not with the Treasury Inspector
11 General's Office. I believe she is still a member of
12 the Office of General Counsel for Treasury in some
13 capacity. I don't know exactly what capacity.

14 Q When you spoke to Mr. Portnoy earlier, you
15 mentioned that you believed, at some point, you
16 believed Ms. Kerner had lied to you in some
17 situation.

18 A I don't know if I portrayed it as lying. I
19 felt that there were some investigations that she was
20 involved in where I wasn't exactly sure what
21 information was relayed, and --

22 Q Relayed to whom?

1 A Relayed to either attorneys or people
2 involved in the investigation, which I thought was
3 inappropriate.

4 MR. O'CALLAGHAN: I have no further
5 questions.

6 MR. PORTNOY: Just one follow-up.

7 EXAMINATION

8 BY MR. PORTNOY:

9 Q The word "lied" is a fairly strong one.

10 A Yes, it is.

11 Q Is it your view that Ms. Kerner lied to
12 you, or is it your view that something else occurred?

13 A I think "lied" is a strong word. I think
14 Ms. Kerner got involved in some things that I was not
15 aware of, rather than actually lied to me, some
16 things that were -- that she got involved in that
17 were not relayed to me which should have, if she --
18 if she was involved, I should have known about it,
19 and that's the best way I can portray that.

20 Q And you viewed it as her responsibility to
21 tell you?

22 A That's correct.

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1 MR. O'CALLAGHAN: For the record, I used
2 the word "lied" because that was the word you used.

3 MR. PORTNOY: It was the word I used.

4 MR. O'CALLAGHAN: I was characterizing your
5 question.

6 MR. PORTNOY: It was the word I used.

7 MR. O'CALLAGHAN: Thank you.

8 MR. PORTNOY: Off the record.

9 (Discussion off the record.)

10 BY MR. PORTNOY:

11 Q Would it be fair to say then that you had a
12 less than ideal working relationship with Ms. Kerner,
13 even before this investigation began?

14 A That's a fair statement.

15 MR. PORTNOY: That's all. Thank you.

16 The witness should have the opportunity to
17 make any statement.

18 MR. O'CALLAGHAN: Do you have any
19 clarifying statement you would like to make? Or
20 Ms. Vassar, do you have any questions you would like
21 to ask?

22 THE WITNESS: No, I don't.

1 MR. O'CALLAGHAN: It is 6:00 and we have no
2 further questions at this time.

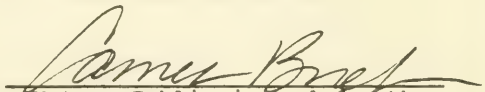
3 (Whereupon, at 6:04 p.m., the deposition
4 was concluded.)

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6 -----
7 JAMES M. COTTOS
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, CARMEN BUNCE, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

**DEPOSITION OF F. MAC DODSON
IN RE: S. RES. 120**

WEDNESDAY, OCTOBER 18, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of F. MAC DODSON, called for examination pursuant to notice of deposition, at 1:05 p.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

ALICE S. FISHER, Esq.
Majority Associate Special Counsel
LANCE COLE, Esq.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PAUL J. FISHMAN, Esq.
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Room 4114
Washington, DC 20530
On behalf of the Deponent.

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EXHIBITS

F. Mac Dodson DEPOSITION NUMBER	IDENTIFIED
Exhibit 7051	19, 2131
Exhibit 1526-1528	26, 2133
Exhibit 523-525	40, 2136
Exhibit 1077	51, 2139

PROCEEDINGS

Whereupon,

F. MAC DODSON

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MS. FISHER:

Q Mr. Dodson, hi. I'm Alice Fisher. I'm associate special counsel to the special committee to investigate Whitewater Development Corporation and related matters. This deposition is being conducted pursuant to Senate Resolution 120. I don't know if you have had an opportunity to see it.

This resolution establishes the special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association and other related matters.

Specifically section 1(b)(2)(c) of Senate Resolution 120 authorizes an investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals related to

4

Madison Guaranty Savings & Loan or Whitewater Development Corporation. This will be the focus of today's deposition.

I will ask you a series of questions and I will ask you to testify under oath. If you don't understand a question please let me know and I will rephrase it.

The stenographer will prepare a record of the deposition and it will be treated as committee confidential until the commencement of public hearings, but prior to the hearings you will receive a letter from the committee telling you that you may come to the Senate to review a transcript and prepare an errata sheet.

MR. FISHMAN: Off the record.

(Discussion off the record.)

BY MS. FISHER:

Q Objections to the form of the question will be noted for the record and counsel may object on the grounds of privilege or relevance. The committee chairman will rule on the objections.

State your name for the record, please.

1 A Mac Dodson.

2

3

4 Q And your present business address.

5 A 425 West Capitol, Suite 1590, Little Rock
6 Arkansas 72201.

7 Q Could you tell me what your present
8 employment position is at this time.

9 A I'm an attorney.

10 Q Could you give me a little background on
11 your employment history.

12 A I got out of law school in '75. I
13 practiced for a firm called Woodward & Kinard in
14 Magnolia, Arkansas for about six years doing oil and
15 gas work primarily. Then I became general counsel
16 for Davis Drilling and Production Company from '81
17 until the time I started with the U.S. Attorney's
18 Office which was in '88.

19 I was at the U.S. Attorney's Office from
20 '88 until March of '93, and since that time I have
21 been in private law practice.

22 Q During the period of time between

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1 August-September 1992 and March of 1993 when you
2 left, who was your direct supervisor at the U.S.
3 Attorney's Office?

4 A From what period of time?

5 Q August-September of 1992.

6 A Chuck Banks, United States Attorney.

7 Q Did you speak to anyone other than your
8 counsel prior to this deposition about the
9 deposition?

10 MR. FISHMAN: Let me state for the record
11 you referred to me as Mr. Dodson's counsel. I, of
12 course, do not represent Mr. Dodson. I represent the
13 Department of Justice and Mr. Dodson in his former
14 official capacity with the department.

15 MS. FISHER: Sorry.

16 MR. FISHMAN: That's okay. I want to make
17 it clear.

18 THE WITNESS: I briefly spoke to
19 Mr. Fishman.

20 BY MS. FISHER:

21 Q You didn't speak about it with anyone else?

22 A I guess I had some conversation with -- I

1 don't think I had really any conversation about what
2 I know about the case with anyone else.

3 Q Did anyone else discuss with you what they
4 knew about the case?

5 A I flew up here with Richard Pence. We had
6 a sort of why-are-we-coming-here-type discussion.

7 Q Could you tell me when you first heard of
8 an RTC criminal referral relating to Madison Guaranty
9 or Whitewater?

10 A It was in, I think, September of '92. It
11 could have been late August, early September.

12 Q Who told you about it?

13 A I actually received the referral. I don't
14 remember whether the FBI might have called me and
15 told me it was on the way or something. That would
16 have been within a day or two. They could have
17 called me first, but I don't remember that. I got
18 the referral. I was the person who would have
19 received the referral, either me or Mr. Banks. One
20 of the two of us got it first.

21 Q Do you have any recollection of the
22 conversation either with someone from the FBI or

1 Mr. Banks prior to receiving the document?

2 A I don't recall any conversations.

3 Q When you received it, do you recall who you
4 discussed it with, that criminal referral?

5 A I know I would have talked to Mr. Banks
6 about it. It is possible that he got it first, and
7 he would have talked to me about it. One of those
8 two scenarios.

9 Q Do you recall what the substance of that
10 discussion was?

11 A Just that it was a hot potato, I guess.

12 Q Was that your opinion or Mr. Banks's
13 opinion?

14 A I think it was both.

15 Q Do you want to explain that a little bit
16 more for the record?

17 A The referral, even though it primarily
18 involved Mr. McDougal, did list the Clintons and I
19 think Jim Guy Tucker, maybe Senator Fulbright. It
20 had a long list of politicians in the referral as
21 witnesses.

22 Q Do you recall anything else about the

1 substance of your conversation with Mr. Banks upon
2 receipt of the RTC criminal referral?

3 A I don't recall any details of the
4 conversation, no.

5 Q Do you recall --

6 A At that time I'm sure he said read it and
7 see what you think. I'm sure that's what happened.

8 Q Did you read it?

9 A Oh, yes, yes. I perused it.

10 Q Do you recall what your thoughts were upon
11 reading it?

12 A Well, we had already tried Mr. McDougal and
13 he was acquitted. I suppose my initial reaction
14 was -- I also thought it appeared to be a check
15 kiting, 1344 check kiting case. That was the basis
16 of the referral. I thought -- I guess my initial
17 thought was is this something we have already tried
18 him on. That was my first course of action, to find
19 out if the allegations contained in the referral were
20 the same substance as the indictment.

21 Q How did you go about doing that?

22 A I gave the referral to the AUSA who had

10

1 handled his trial. Her name is Sandra Cherry. She
2 reviewed it and told me she had never seen it. It
3 was news to her. It was not anything that was
4 involved in the previous trial.

5 Q Had you been involved in the previous
6 trial?

7 A No. I may have -- I think I was at the
8 U.S. Attorney's Office. I don't recall what year
9 that was. I was not -- I didn't work on the case.

10 Q Did Mr. Banks?

11 A Well, I'm sure he supervised the case. He
12 was not in the courtroom trying the case. Sandra
13 Cherry did that, along with a guy named Ken Stoll,
14 S-t-o-l-l, they actually tried the case.

15 Q Do you recall the substance, other than
16 what you have testified to, of your conversation with
17 Ms. Cherry at that time?

18 A I just asked her to review it, and she did,
19 and told me this was new stuff.

20 Q What action did you take upon receipt of
21 that?

22 A I reported that to Chuck, and then we went

1 through a series of, I guess, the next few weeks
2 trying to decide what to do with it. The main
3 consideration, Mr. Banks had been nominated to a
4 federal judgeship by President Bush, and we thought
5 it was maybe inappropriate to do anything with the
6 case during the election period.

7 At some point in time Chuck actually made
8 that decision that we were not going to issue any
9 subpoenas or have any real active investigation while
10 the campaign was going on.

11 Q Do you recall having discussions about the
12 substance of the referral with Mr. Banks during this
13 period?

14 A Yes.

15 Q What do you recall?

16 A I guess I need to preface that with saying
17 I have seen the referral. I had never seen any
18 background documents.

19 Q Okay.

20 A Chuck did review those documents. To me,
21 there are two phases to our evaluation of the case.
22 Mr. McDougal had been tried before. In our opinion,

1 he was kind of a nut. I remember thinking at the
2 time he had cancer and that he was in very poor
3 health.

4 We had pretty much, I think, drained him of
5 all his money from the previous trial. He seemed to
6 me to be a sympathetic character, not someone -- on a
7 routine check kiting case, he would not be a high
8 priority case. That was one part of it.

9 The actual merit of the check kite case
10 itself I don't have enough -- I didn't have enough
11 information to know whether it was a good case or
12 not. I don't think Chuck thought it was a good
13 case.

14 Q Could you expand on that any more,
15 Mr. Banks's view about the referral?

16 A He did not think it was technically a good
17 case.

18 Q For the reasons that you stated about
19 Mr. McDougal?

20 A No. I'm talking about the -- I don't know
21 what the backup material was. I'm assuming there
22 were checks and bank records and so forth that he

1 went through to make a determination, but I don't
2 really know how he arrived at that.

3 Q Do you know whether he was distinguishing
4 the case against the McDougals as to the allegations
5 made as to witnesses named in the referrals?

6 MR. FISHMAN: I'm sorry? You said
7 allegations made as to witnesses?

8 MS. FISHER: Not allegations.
9 Participation, witnesses.

10 THE WITNESS: I don't think there was
11 anything in the referral that indicated any
12 wrongdoing by any of the witnesses.

13 BY MS. FISHER:

14 Q That's correct.

15 A I suppose they were maybe partners in some
16 of these enterprises that had bank accounts there.
17 That's the way I remember it. I haven't seen the
18 referral in three years or something.

19 Q Do you recall whether you discussed it, the
20 criminal referral, with anyone at the Department of
21 Justice here in Washington?

22 A No, I never did. I discussed it with the

1 FBI, of course. Maybe I didn't make that clear. All
2 through this period of time, from September until I
3 left, the FBI was always brought in to share in the
4 discussion what we were doing with the case, and I
5 think they always agreed. At least, if they
6 disagreed, they never told us. I think I was on
7 fairly good terms with those guys. I think we had
8 good working relationships. I think they would not
9 have held back their opinions.

10 Q Who are those individuals?

11 A Steve Irons with the FBI is the guy I dealt
12 with most. He was, I guess, on the same sort of
13 level I was in the FBI. I was the first assistant in
14 the U.S. Attorney's Office. He was the head of their
15 white collar division or something. I'm sure
16 Mr. Banks had conversations with Mr. Pettus, who was
17 the local head of the FBI.

18 Q Anyone else at the FBI that you recall
19 discussing this with?

20 A I don't remember anyone else. It seems to
21 me there were some other people present in some of
22 these meetings, but I just don't remember who they

1 were.

2 Q When do you recall was your first
3 discussion with Mr. Irons about the criminal
4 referral?

5 A I'm sure I discussed it with him from the
6 very beginning.

7 Q Can you tell me about the substance of
8 those conversations?

9 A It would have been very similar to what I
10 told you the discussions I had with Chuck. I don't
11 recall whether he was -- I'm sure he wasn't there for
12 all the discussions. It would have been the same
13 sorts of things, we don't want to work on the case
14 because of the election, we have problems with the
15 merit of the case, those sorts of discussions.

16 Q Did you recall whether you or Mr. Banks
17 filed what has been referred to as an urgent report
18 with the main Department of Justice after receipt?

19 A Yes. I did.

20 Q Can you tell me about that, please.

21 A I think it was in October. We had it
22 several weeks, four or five weeks. I had been to a

16

1 seminar for first assistants, and they told us -- you
2 are characterizing it as "urgent." My recollection
3 was "hot cases." That's what I remember him, Wayne
4 Rich saying, if you have a hot case that you think we
5 need to know about, send it to us, send us a copy.

6 I suggested -- I told Chuck that -- I don't
7 think Chuck was aware that we needed to do it. I
8 suggested we do it, and he said okay. I called Wayne
9 Rich. He was not there. I talked to someone else.
10 I don't recall who it was. They said yes, send it
11 up, it sounds like it fits into the category of hot
12 cases, and I faxed it to him.

13 Q Did it have a cover letter that went with
14 it?

15 A Yes.

16 Q Do you recall what the cover letter said?

17 A It was just like enclosed is the referral,
18 note that it mentions all these politicians.

19 Q You recall that you faxed it?

20 A Yes. I know that because I have been shown
21 this document.

22 Q And I believe you said that you had a

1 conversation with Mr. Rich about this at a seminar?

2 A He spoke to the whole assembly of people
3 and told all the first assistants if we had what we
4 considered a hot case, to call him and let him know,
5 let him know what was going on in our district.

6 Q Do you recall when that seminar occurred?

7 A I recall it was in Annapolis. It was
8 before we got this referral. I don't remember how
9 far ahead. There was actually -- I have now been
10 told there is a section of the U.S. Attorney's manual
11 that says you should do that, which when I sent it in
12 I was not aware of that.

13 MR. FISHMAN: Off the record.

14 (Discussion off the record.)

15 BY MS. FISHER:

16 Q Do you recall what office Mr. Rich is with?

17 A It is the office of U.S. Attorneys, isn't
18 it? It is in the Department of Justice. It was
19 designed to be a liaison between U.S. Attorneys'
20 offices and the Department of Justice.

21 MR. FISHMAN: Off the record.

22 (Discussion off the record.)

1 BY MS. FISHER:

2 Q Do you recall having any other discussions
3 with anyone at the Department of Justice in
4 Washington relating to this referral?

5 A No. I know that no one from the Department
6 of Justice ever called me about this referral other
7 than the initial fax, just to confirm that it got
8 there and that sort of thing. No substantive
9 discussion at all.

10 Q Do you recall whether Mr. Banks had any
11 substantive discussions with someone at the
12 Department of Justice?

13 A I don't know.

14 Q He never told you about any such
15 discussions?

16 A I know he wrote a couple of letters on the
17 subject. But I don't know anything about whether he
18 talked to people or that sort of thing.

19 Q What is the next contact that you are aware
20 of regarding the criminal referral?

21 A I think it was in late October, maybe early
22 November, sometime slightly before the election.

1 Chuck wrote a letter. At first we had a meeting with
2 the FBI, and I was not there for the whole meeting.
3 I had some court appearance I had to make. I
4 attended part of the meeting with Mr. Pettus,
5 Mr. Banks, there were probably other people there. I
6 got the impression that maybe the FBI was wanting to
7 move on the case or do a little bit more than they
8 had been doing.

9 The result of that was Chuck wrote a letter
10 to Justice after that meeting and kind of set out
11 what he thought about the case and what he was doing
12 and that sort of thing.

13 Q I'm going to show you a document that is
14 Bates stamped 7051 dated October 16, 1992 from
15 Charles Banks to Don Pettus. Is this the letter that
16 you are referring to?

17 (Exhibit 7051 identified.)

18 (Witness examined the document.)

19 A Yes, this is it.

20 Q I believe on the fourth paragraph on the
21 first page of this letter, it states that "Neither I
22 personally nor this office will participate in any

20

1 phase of such an investigation regarding the above
2 referral prior to November 3, 1992."

3 A Yes.

4 Q This refers to Mr. Banks's decision not to
5 participate in an investigation prior to the
6 election?

7 A Right.

8 Q Are you aware of any involvement in such an
9 investigation prior to the election or after the
10 election done by Mr. Banks or yourself?

11 A Other than read the referral, I did
12 nothing, and make sure it was not something we had
13 already indicted him on, I did nothing other than
14 meetings within the office. Chuck, I think, reviewed
15 the backup documents and went one step further than I
16 did. Other than that, I don't know of anything our
17 office did.

18 Q Did you have any further discussions with
19 the FBI?

20 A During this --

21 Q Subsequent to October 16, relating to this
22 matter?

1 A No. I think after we made the decision we
2 weren't going to do anything until after the
3 election, I don't recall spending any time on it. It
4 is possible. All during this time, Jean Lewis would
5 call me and ask me what was going on.

6 Q Do you want to tell me about that?

7 A Maybe I should tell you, all white collar
8 crime cases came over my desk and I assigned the
9 cases to the various attorneys in the office. So, it
10 was not unusual for agents from all agencies to call
11 me and want to know what was going on on their case.

12 I took it that that's what she was doing,
13 she was interested in her case and she wanted to know
14 what was going on. I was probably a little coy in
15 answering her, because I don't know her, I have never
16 met her.

17 I would have been looking to the FBI more
18 than RTC to investigate this. I just didn't want to
19 discuss the case too much over the phone with
20 somebody I didn't know. I am not trying to say
21 anything bad. That's just the way I felt about it.

22 Q Do you recall that Mr. Banks at some point

1 requested recusal from this matter?

2 A I think he did. I think maybe -- I'm not
3 sure. My memory has been refreshed by the FBI. I
4 think there is another letter.

5 Q I want to show you a document that the
6 Bates number is cut off due to copying. It is dated
7 January 27, 1993. It is from Charles Banks to Donna
8 Henneman.

9 (Witness examined the document.)

10 Do you recall seeing this letter?

11 A Yes.

12 Q Did you draft this letter?

13 A No.

14 Q Did you discuss the drafting or the sending
15 of this letter with Mr. Banks?

16 A Let me finish reading it here.

17 Q Take your time, please.

18 (Witness examined the document.)

19 A I'm sure that Chuck would have given me
20 this letter to look at and we mailed it. Other than
21 that, I didn't have any input in it.

22 Q Did you discuss it with them, either the

1 letter or what is contained in the letter?

2 A I'm sure I did. I don't recall any details
3 of that.

4 Q I guess it is the fifth paragraph down says
5 "we have no investigation ongoing." That is
6 consistent with the October 16th letter?

7 A That's correct.

8 Q And for the reasons that you previously
9 stated?

10 A That's correct.

11 Q Going to the --

12 A I think that the FBI, after the election,
13 did a little more work with documents, but I'm not
14 positive about that. It seems to me I recall that.
15 But our office didn't do anything.

16 Q Did they tell you about what they were
17 doing with their investigation?

18 A They didn't tell me.

19 Q You just knew that there was an FBI
20 investigation?

21 A I just think they may have been doing
22 something on the case.

1 Q Going to the last paragraph --

2 MR. FISHMAN: On the first page or the
3 second page?

4 BY MS. FISHER:

5 Q On the first page, the second sentence, "It
6 seems prudent that a limited preliminary
7 investigation of allegations pertinent to Mr. and
8 Mrs. McDougal and Mrs. Anspaugh should be
9 considered. The taking of 302s from these
10 individuals should determine whether there is merit
11 to substantiate further investigation."

12 Do you recall that that was Mr. Banks's
13 position related to the criminal deferral at that
14 time, that a further investigation was warranted?

15 A I think that is consistent with what I told
16 you earlier. I think there was maybe a technical
17 check kite case against the McDougals and it probably
18 did need to be checked into. Whether or not we would
19 have ultimately -- I thought maybe he did make a
20 decision that it had no merit at some point in time.
21 I don't know. I think this is accurate with what I
22 remember.

1 Q This is consistent with what you recall
2 discussing with him?

3 A Yes.

4 Q That maybe a further investigation was
5 warranted into these matters?

6 A As to these people.

7 Q Do you recall any subsequent activity on
8 behalf of the U.S. Attorney's Office in the Eastern
9 District of Arkansas relating to the criminal
10 referral?

11 A No. The only other thing I did is I turned
12 this over to Mr. Pence when I left and told him what
13 I knew about it.

14 Q Do you recall the substance of the
15 discussions with Mr. Pence at that time?

16 A No. I really don't. I gave him -- I'm
17 assuming I told him the same as I told you today.
18 That's all I know about it.

19 Q Are you aware of Mr. Banks's -- any
20 contacts between Mr. Banks and any individual in the
21 Department of Justice in Washington throughout this
22 whole period?

1 A No, I don't know if he had any contact at
2 all.

3 Q I believe you testified that you left in
4 March of 1993 with Mr. Banks?

5 A Left the same day.

6 MS. FISHER: I don't think I have any
7 further questions. Thank you.

8 MR. FISHMAN: Off the record.

9 (Discussion off the record.)

10 EXAMINATION

11 BY MR. COLE:

12 Q Mr. Dodson, I would like to show you a
13 document, if I could, that is marked FBI 1526 through
14 1528 that was produced to the special committee by
15 the Federal Bureau of Investigation. Take as much
16 time as you need to read it. It appears to be a
17 chronology.

18 For the record, there is a fax line at the
19 top that indicates it was faxed to or from Little
20 Rock -- to Little Rock, it looks like.

21 (Exhibit 1526-1528 identified.)

22 (Witness examined the document.)

1 BY MR. COLE:

2 Q Take as much time as you like, but I will
3 point you to some specific entries to see if they
4 refresh your recollection. That's my purpose in
5 showing you the document.

6 A Okay.

7 Q If you would like to keep that copy in
8 front of you to refer to, if you would look at the
9 entry two up from the bottom that reads "over next
10 few months, RTC (Lewis)."

11 A Are you on the first page?

12 Q Yes. "Apparently advised several AUSAs and
13 FBI employees of what she was working on and while it
14 is not perfectly clear what months that would be in
15 it certainly was sometime months prior to mid-August
16 1992."

17 Do you have any recollection of Ms. Lewis
18 or anyone else at the RTC contacting anyone in your
19 office on this matter?

20 A No, I don't recall that.

21 Q Was your office in contact with Ms. Lewis
22 on other cases at this time?

1 A Not that I was aware of. We didn't -- I
2 don't think so.

3 Q Had you previously received any criminal
4 referrals from Ms. Lewis?

5 A No.

6 Q Had your office previously received any
7 criminal referrals from the RTC?

8 A I'm sure we had. We did an investigation
9 of First South, which was a failed savings & loan.
10 There were several other ones. Those referrals, I
11 think, came in before I was the person who reviewed
12 them. I'm not sure whether they came from the RTC or
13 whether they came from some banking -- FDIC sometimes
14 sends things in. There are any number of agencies
15 that could send things in. I'm not sure of anything
16 specifically that the RTC sent in.

17 Q Was the referral your office received from
18 the RTC regarding Madison Guaranty the first RTC
19 criminal referral you had dealt with?

20 A Yes, that's true.

21 Q Or at least dealt with when it initially
22 came into the office, distinguishing between

1 subsequently as the case developed.

2 Was there any procedure in place in your
3 office at that time for responding to RTC criminal
4 referrals?

5 A Not specifically RTC, but we did have --
6 any agency that gave us a referral I would normally
7 review it and a typical referral I would then try to
8 assign it to an attorney who, number one, had the
9 time and, number two, had the skill to handle the
10 case. We would try to assign cases to people who
11 could best do the job.

12 Sometimes referrals I would hold them a
13 while, maybe waiting for the lawyer I wanted to
14 handle it to get finished with something else. There
15 was no set procedure that I get a referral and I had
16 to assign it immediately to anyone. That was not the
17 case.

18 Q What role did the FBI play in your office's
19 handling of criminal referrals from the RTC?

20 A Well, in the other savings and loan cases
21 we had, I'm not sure whether they were RTC or some
22 other agency, they were the agency that did all the

30

1 background. They did all the work. That was who we
2 relied on to handle savings and loan cases.

3 Q For the record, if you could perhaps give a
4 little more of the flavor of how the FBI office in
5 Little Rock interacted with the U.S. Attorney's
6 Office in that kind of investigation and who made the
7 final decision in particular as to what action should
8 be taken with regard to referral.

9 A Well, obviously the U.S. Attorney's Office
10 would make the decision, I guess have the last say in
11 decisions, although we would defer to the FBI in
12 matters on how to best investigate something.

13 In a typical savings and loan case, using
14 First South for example, they had four or five agents
15 working on it, they had 2- or 3000 square feet in a
16 separate office and we assigned two or three AUSAs to
17 work on that case continuously for three or four
18 years.

19 So, I guess we worked pretty closely with
20 the FBI on these savings and loan cases, in a
21 nutshell.

22 Q Do you have any knowledge as to whether

1 anyone from the FBI Little Rock office contacted
2 either main Justice in Washington or the FBI
3 headquarters in Washington concerning the handling of
4 this referral prior to your sending the urgent report
5 memorandum to the Executive Office of U.S. Attorneys
6 on October 7th?

7 A I don't know how -- I really don't know the
8 answer to that. I think that they -- every time they
9 would meet with me, I think the FBI does a
0 clandestine 302 on the AUSA and sends it to
1 Washington. I don't know that for sure. I always
2 assume that.

3 Q The reason for my question, just to be as
4 clear as I can possibly be, is that there has been
5 some testimony in the committee's depositions that
6 Department of Justice officials here in Washington
7 understood that there was a concern, as it was
8 described in testimony, a concern in the Little Rock
9 U.S. Attorney's Office concerning the handling of
0 that referral. The testimony was that concern came
1 to the attention of Justice Department officials on
2 or before October 8, 1992. Do you have any knowledge

32

1 as to that matter?

2 A No. The only thing I could -- what was the
3 date of Chuck's letter? Was it October 14th?

4 Q Sent on the 16th, according to the top of
5 the letter.

6 A This letter was written after a
7 conversation with the FBI. I don't remember the
8 exact date. It could have been a few days before
9 that, and maybe they reported the substance of that
0 meeting to the department, but I don't know that.
1 I'm not aware of that.

2 Q I plan to get to some events closer to the
3 date of this letter that may relate more directly to
4 the letter. I am focusing on the time period prior
5 to your sending the referral to Justice.

6 A Oh. I'm sorry. Repeat the question.

7 Q If it helps to put it in context, the time
8 period I'm focusing on is on or about September 1 or
9 2nd when the referral was received in your office and
0 October 7th, if I'm recalling the date correctly,
1 when you faxed the document to the Executive Office
2 of U.S. Attorneys here in Washington. That's the

1 time period I'm focusing on as far as the views of
2 the Little Rock office of the FBI concerning the
3 referral.

4 A I was not aware that they had any problem
5 with the way we were handling the referral during
6 that time period.

7 Q If I could ask you to turn to the next page
8 of the chronology that I handed you, the second page,
9 FBI 1527, and look at the third entry on that page
10 which is brief. It follows an entry on September 2,
11 1992 and says "next day or so spoke to USA who wanted
12 us to take no action until we had time to discuss it
13 due to sensitivity (previous conversation when it was
14 coming had occurred)."

15 Do you have any knowledge of the
16 conversation referenced in that entry in the
17 chronology?

18 A I don't remember that. I don't doubt it,
19 but I don't remember it.

20 Q When you say you "don't doubt it," could
21 you describe what your recollection is as to the view
22 of the U.S. Attorney at that time, Mr. Banks, as to

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1 what action he would take and what instruction he
2 might have given the FBI.

3 A I doubt if he had formulated what he wanted
4 to do with it at that time. Maybe it would help -- I
5 talked to Steve Irons about a variety of cases, and
6 during those conversations, we may have discussed
7 this case several times during that time period, but
8 it would have been what are you doing on the case and
9 that's the only conversation.

10 Q Did you have any sense that Mr. Irons had a
11 concern about how the case was being handled by your
12 office?

13 A No. He never expressed any concern to me.

14 Q Did he indicate any views as to the timing
15 or the speed with which the matter was being handled?

16 A No. I don't remember any. In fact, I
17 thought that we brought the FBI into that
18 decisionmaking process and they agreed with us.

19 Q There is an entry at the bottom of the same
20 page, page 1527, one entry up from the bottom that is
21 dated September 23, '92 that reads "FBI USA meet, no
22 action pending taken pending further review by USA."

1 Do you have a recollection as to whether
2 that is the meeting you previously testified to that
3 you and Mr. Banks met with Mr. Pettus and perhaps
4 others at the Little Rock FBI?

5 A That seems to me to be too far in advance,
6 but it is possible.

7 Q When you say "too far in advance," do you
8 mean --

9 A Too far in advance of the October 16th
10 letter. I think that the October 16th letter was
11 written within a few days of that meeting. It may
12 have even been written the same day. I just don't
13 remember that.

14 Q Do you recall more than one meeting with
15 the FBI on this subject prior to Mr. Banks's letter
16 of October 16?

17 A I don't, other than just my normal meeting
18 with the FBI about a variety of cases. I would take
19 it from this note on the 23rd, "FBI and USA meet,"
20 that probably means I was not there.

21 Q Who was present at the meeting that you do
22 recall with the FBI?

1 A I was there for part of the meeting. Chuck
2 was there. I feel fairly certain we were the only
3 two people from our office that would have been
4 there.

5 Q Who was there from the FBI?

6 A Mr. Pettus, Mr. Irons and I believe there
7 was another agent there, but I don't recall who it
8 was. I don't remember his name. Sorry.

9 Q Who --

10 A Don Whitehead, I believe, is his name. I
11 believe he was there, too.

12 Q Who called that meeting?

13 A I don't know.

14 Q And if I understand your testimony
15 correctly, you recall that is a meeting that occurred
16 prior to Mr. Banks's October 16th letter and you
17 believe perhaps a few days prior but you can't recall
18 the date beyond that?

19 A It was close in time to this letter. It
20 could have even been the same day. I guess I'm on
21 the 14th, rather than the 16th. It was dictated on
22 the 14th.

1 Q Do you recall whether at that meeting the
2 FBI indicated that they had received any direction or
3 instruction from FBI headquarters in Washington on
4 this matter?

5 A Yes. I think that that was the whole -- I
6 think he even says it in his letter. I think that
7 they -- the letter says "I am now advised that you
8 have been ordered to do an immediate review to
9 determine if an investigation is warranted."

10 I think that means the local FBI office had
11 been told to make a review by someone, whoever their
12 boss was, and I'm assuming that they knew that Chuck
13 wouldn't like that. And so they had the meeting.

14 Q Was that subject discussed at the meeting,
15 the fact that the FBI, Little Rock FBI had been
16 directed to undertake a review?

17 A Yes, I think so.

18 Q Did you or Mr. Banks, if you know his
19 views, regard it as unusual that the FBI had been
20 directed by FBI Washington to conduct a review of
21 this referral?

22 A I don't find anything -- no, that wouldn't

1 surprise me at all. I don't know whether it would
2 surprise Chuck.

3 The reason that I think that Chuck wrote
4 this letter is that he wanted all those people to
5 know that while he was U.S. Attorney, there would not
6 be any investigation until after the election. I
7 think that's what he is trying to say as clearly as
8 he can.

9 Q I think that is very clear --

10 A Whether the FBI wanted to or not, it was
11 not going to happen unless he was relieved of his
12 duties.

13 Q I think that is very clear from his letter
14 and from the other documentation we have. What I'm
15 focusing on again, to be as clear as I can, is if you
16 know how the FBI came to be involved in this matter
17 in the way they were, particularly the FBI
18 headquarters in Washington.

19 A I really don't know what brought this up.

20 Q Did you have any further discussions with
21 Mr. Banks about the FBI's activities?

22 A As relating to --

1 Q As relating to this issue of what kind of
2 investigation should be undertaken for this
3 referral.

4 A We may have had other conversations, but
5 the conversations would have been along the same line
6 as in his letter. We did not think that any
7 investigation should go on during the election,
8 period, and we were in a sense as much as one agency
9 can tell another agency what to do, we were saying
10 you are not going to do that in the district where I
11 am the U.S. Attorney.

12 I got the impression that the guys in
13 Little Rock, the FBI agents agreed with that, but
14 apparently someone higher up didn't.

15 Q It's the latter part I'm trying to focus in
16 on.

17 A I have no knowledge of that at all. I
18 don't know who told them to do it. They didn't share
19 any of that with me.

20 Q Let me show you a document just to ask if
21 you have seen it previously, bears FBI numbers 523 to
22 525. It is an internal FBI memorandum. I have no

1 reason to believe you have seen it unless perhaps
2 someone showed it to you at the meeting that we have
3 been discussing.

4 (Exhibit 523-525 identified.)

5 (Witness examined the document.)

6 A I have never seen this.

7 Q If you would look at the bottom of the
8 first page carrying over to the second page where
9 this memorandum describes a course of action, this is
10 a memorandum from the director, FBI to FBI, Little
11 Rock describing a course of action FBI, Little Rock
12 should follow. Would you read that and tell me if
13 that is consistent with your recollection of what the
14 FBI in Little Rock undertook to do.

15 (Witness examined the document.)

16 A Yes, I think this is an error in a certain
17 sense. I think the FBI already had these documents,
18 but I could be wrong about that. It says that Little
19 Rock should obtain the documents referenced in the
20 criminal referral. I thought they already had them.
21 Maybe we had them. I think they are telling the FBI
22 to do something that they had already done.

1 Q So, you think in addition to already having
2 them, which I would assume they did, if we haven't
3 placed the document in the record here, but the RTC
4 referral was directed to Mr. Pettus, as I recall.
5 You think by this time they had already reviewed the
6 documentation attached to the referral?

7 A I don't know if they had. I think I said
8 this earlier. At some point in time, they did review
9 those documents. I thought maybe it was after this
10 meeting, but it could have been before. I don't know
11 how busy they were.

12 Q The third page of this document references
13 a meeting that according to this document occurred on
14 October 8, 1992 involving officials from the FBI and
15 Assistant Attorney General Robert Mueller and special
16 counsel Ira Raphaelson.

17 Look at that entry, if you like, but my
18 question is whether you had any contact with
19 Mr. Mueller or Mr. Raphaelson about this matter.

20 A No.

21 Q Are you aware of anyone in your office,
22 that is, the U.S. Attorney's Office, had any contact

1 with those individuals on this matter?

2 A I doubt it. It would have been me or
3 Chuck, and I know Raphaelson, because I have met him
4 places. I'm sure Chuck has no idea who these people
5 are. I guess, ask Chuck that. I know I didn't talk
6 to any of these people. I don't recall him saying
7 anything about it to me.

8 Q Just to follow on the chronology here, if I
9 could show you a document that was produced by the
10 Department of Justice bearing Bates numbers 7214. It
11 is an October 8, 1992 E-mail that appears to be from
12 Mr. McWhorter to Mr. Raphaelson. It references a
13 discussion that you had with someone on
14 Mr. McWhorter's staff. I wanted to ask if you
15 recalled that discussion.

16 (Witness examined the document.)

17 A I think I have seen this before, but I
18 don't know anything about it.

19 Q Do you remember with whom you spoke on
20 Mr. McWhorter's staff?

21 A Mr. McWhorter is on the staff at EOUSA?

22 Q As I understand it at the time, but that is

1 correct.

2 A I think the person I spoke to is the person
3 I addressed my letter to, but I don't recall that
4 now.

5 Q Do you have any knowledge as to why
6 Mr. McWhorter would have said in this E-mail to
7 Mr. Raphaelson that your office had been "sitting on"
8 the referral?

9 A We had been, but I don't recall saying that
10 to him.

11 Q Is that a reference to the amount of time
12 that had passed between your receipt of the referral
13 and your actually sending it for distribution inside
14 the Department of Justice?

15 A What it means is I have had the referral
16 for six weeks, and they didn't have a copy of it.
17 Although, it is not normal to send them all of our
18 referrals. In a normal case they wouldn't get a copy
19 anyway but this sitting on it, I don't know whether
20 they said that or not.

21 Q I wanted to try to, if possible, shed some
22 light on what that means in particular.

1 Perhaps you could explain the reasons for
2 the time lag between the receipt of the referral and
3 the time you actually sent it up for distribution.

4 A Well, in all honesty, that's not a normal
5 thing to do. I just didn't think about doing that.
6 At some point in time it occurred to me I think this
7 probably fits into the type of case they want a copy
8 of, and then I did it.

9 MR. FISHMAN: Excuse me. Can we take
10 five?

11 MR. COLE: Sure.

12 (Recess.)

13 BY MR. COLE:

14 Q Mr. Dodson, if I could once again direct
15 your attention to the chronology that I previously
16 provided you on the page marked 1527, the first page
17 at the bottom. The entry noted, October 6, 1992,
18 which reads "First assistant USA advises they are
19 going to notify DOJ they received referral. Also
20 advised Jean Lewis of RTC now calling him. She
21 called and said she didn't mean to pester him, but it
22 was standard to make a call or contact six weeks

1 after referral to see if any clarification or
2 assistance was needed."

3 Do you recall that telephone conversation?

4 A I recall, I think, I had several
5 conversations with her. I do recall the first one.
6 I'm not sure -- I'm assuming the date is, date is
7 right. I remember talking to her.

8 Q What do you recall she said to you?

9 A She wanted to know what was going on with
10 the referral. I don't remember what I told her. Not
11 much.

12 Q Had you ever received a telephone inquiry
13 from her before?

14 A I don't know if this is the first call.

15 Q Assuming this was the first call on this
16 matter.

17 A If that's the first call, that's the only
18 time at that point that I talked to her.

19 Q Had any RTC investigator ever contacted you
20 about a referral that had been sent over to your
21 office prior to the time that you initiated a
22 criminal prosecution? I would assume you might have

46

1 contact after that?

2 A Are you talking in general?

3 Q Yes.

4 A I don't recall any RTC person, but all
5 agents call and want to know what is going on with
6 the cases, if they are any good.

7 Q So, did you regard this contact as unusual?

8 A No.

9 Q And was there anything unusual about the
10 contact? It is a different question than whether a
11 contact was unusual.

12 A I don't remember anything unusual about
13 that contact. As time went on, I'm not sure.

14 Q I would have covered it in any event, but I
15 realize I want to stay on the chronology. I wanted
16 to cover one more thing on the October 8, 1992 E-mail
17 message that I previously showed to you, and that's
18 the sentence which purports to refer to a discussion
19 you had with someone in the Executive Office of U.S.
20 Attorneys that reads "he said that he thought some
21 further investigation was needed."

22 Do you recall that aspect of your

1 discussion with a representative of the Executive
2 Office of U.S. Attorneys?

3 A I don't recall, no. I don't know -- I
4 don't remember what I thought at the time, but maybe
5 I did say that.

6 Q That was going to be my next question, is
7 whether you can recall at the time what your views
8 were, if you had a view, as to whether further
9 investigation of this referral was necessary.

10 A I think at that time we decided we weren't
11 going to do anything until after the election. But I
12 don't know whether -- I probably had -- I don't know
13 if I discussed with Chuck about the merits of the
14 case against the McDougals. I'm not sure whether I
15 had formulated an opinion about that at that time.

16 Q Turning back then to your contacts with
17 Ms. Lewis concerning the 1992 RTC criminal referral.
18 Could you describe those contacts as you recall they
19 occurred.

20 A She called me quite a few times wanting to
21 know about her case.

22 Q I realize I'm not asking you to give

1 specific dates, because I understand that you of
2 course can't do that. If you could put it in a time
3 frame as best you can, fall, by month, season,
4 whatever.

5 A All the calls would have been between the
6 1st of September and probably November, around
7 election time. It was my recollection she called me
8 every week or every other week. She called me fairly
9 often. I really don't remember -- I got the
10 impression that she thought I was not moving fast
11 enough, but that's really the only thing I remember
12 about the conversation. Do you have anything to
13 refresh my memory about that?

14 Q Other than the entries in this chronology,
15 but I would like to go back before we look at that,
16 too, you just stated she called you several times
17 between early September and election time. Do you
18 recall a relationship between her calls and the
19 election?

20 A No. I'm not saying that. I don't remember
21 doing much of any or any work on the case after the
22 election. I just don't think that was -- I don't

1 know. Chuck may have been doing something. We just
2 never talked about it much after that. What I'm
3 saying is in my mind, that would have been the time
4 period that she was calling.

5 Q Do you recall whether she continued to
6 contact you after the election?

7 A Well, I think that she would -- I would be
8 the person she was supposed to contact always, and I
9 think there was a letter from the FBI to her saying
10 don't call us anymore, call Dodson. So, I think I am
11 the person she would have talked to.

12 Except I do think during the period of time
13 that Sandra Cherry was looking at the referral to
14 determine whether it was something we had already
15 prosecuted McDougal on, I do think she maybe talked
16 to Sandra once.

17 Q How would she have known to contact Sandra?

18 A As I recall, she called me and I said we
19 are checking on this to make sure it is not old news,
20 call Sandra and she can tell you how she is coming on
21 it.

22 Q To go back to the timing of the calls and

1 try to be as clear as possible on that. Do you
2 recall whether you had any contact at all with
3 Ms. Lewis after the election in November of 1992?

4 A I don't have any recollection of that.

5 Q Your best recollection is the contacts
6 occurred at or about the time of the receipt of the
7 referral in early September and the election?

8 A My recollection is once she made the
9 initial call, introduced herself, said she is the one
10 that prepared it, she called me on a regular basis
11 after that. I don't remember the spacing of it. I
12 think she called me four or five times.

13 Q Did she ever make any reference to the
14 election in her calls to you?

15 A No. And I do not think -- I'm not positive
16 about this -- but I do not think I ever told her a
17 decision had been made to do nothing on the case
18 until after the election. I don't believe I told her
19 that.

20 Q Do you have a recollection of telling her
21 at some point that nothing would be done, that your
22 office had decided nothing would be done on the case?

1 A I don't know. It seems to me that she was
2 told that at some point in time, but I don't think I
3 did it.

4 Q Do you know who did?

5 A No. I'm not positive she was told. Surely
6 she was told at some point in time.

7 Q Do you have any knowledge of Ms. Lewis
8 having contacts with individuals in the FBI office in
9 Little Rock in this same time period that we have
10 been discussing?

11 A I am positive someone had shown me a letter
12 from the FBI to her telling her to contact me. So I
13 assume from that that she was contacting the FBI and
14 they didn't want to talk to her anymore.

15 Q You earlier made reference to a letter that
16 you recalled from the FBI in Little Rock, as I
17 understood it, to Ms. Lewis concerning this
18 referral. If I could show you a document marked FBI
19 1077 and ask you whether you have seen that document
20 before.

21 (Exhibit 1077 identified.)

22 (Witness examined the document.)

1 THE WITNESS: That's the letter I was
2 referring to.

3 BY MR. COLE:

4 Q That is the letter you were referring to?

5 A Yes. That indicates that I told the FBI to
6 have her contact me, and I don't know if that is --
7 in my mind, I was doing it as a favor to the FBI,
8 because I didn't really mind talking to her, to be
9 honest. That's what I did. I did a lot of that.

10 Some people -- to me that was part of my job, to try
11 to keep agents happy and have good relations with all
12 these people. So I didn't mind taking on that job.

13 Q Did the FBI ask you if you would be the
14 point of contact with Ms. Lewis?

15 A I think I had a conversation with Steve
16 Irons and he said she had been calling and maybe I
17 should handle all the calls.

18 Q What else did Mr. Irons say about his
19 contacts with Ms. Lewis?

20 A I don't know if he said -- it seems to me
21 that they were -- she had irritated him.

22 Q Do you know what she had done to irritate

1 him?
2 A No, I don't.
3 Q Did Mr. Irons ever express any views to you
4 regarding his opinion of Ms. Lewis's work on this
5 matter?
6 A No.
7 Q The same question for others in the FBI.
8 A No.
9 MR. COLE: Off the record.
10 (Recess.)
11 BY MR. COLE:
12 Q Did there come a time when your office,
13 that is the U.S. Attorney's Office in Little Rock,
14 referred this criminal referral that we have been
15 discussing to the Justice Department in Washington?
16 MR. FISHMAN: What do you mean by "referred
17 it"?
18 MR. COLE: "Referred" is perhaps not the
19 best word.
20 THE WITNESS: I think --
21 BY MR. COLE:
22 Q Forwarded it for review or analysis to the

1 criminal division in Washington.
2 A Not while I was there. The last letter
3 Chuck wrote that he thought that we should recuse, as
4 far as I know, is the last contact we had with
5 Justice while I was there.
6 Q That's the last information you have --
7 A Yes.
8 Q -- about that?
9 A Yes.
10 Q Do you have any knowledge of inquiries by
11 Ms. Lewis to the Department of Justice concerning the
12 referral after that time, the time of that letter?
13 A No.
14 Q During the period of time that we have been
15 discussing, mid-to-late 1992 through mid-1993, are
16 you aware of what other failed savings and loans the
17 RTC was investigating in Arkansas?
18 A It seems to me that the FBI told me they
19 were investigating Superior Federal and there might
20 be some referrals in the future on that and maybe
21 First Federal. But I was led to believe that there
22 would be some referrals coming out in the next year

1 or so and on a couple other institutions. I think
2 those are the correct names.

3 Q Have you ever heard of an S&L in Arkansas
4 called Saver Savings?

5 A Yes, Saver might be right instead of First
6 Federal.

7 Q Do you have any knowledge of any
8 instruction or direction given to the RTC by the FBI
9 in terms of allocating investigative resources?

10 A I have no idea or knowledge of that.

11 Q Did your office, that is the U.S.
12 Attorney's Office in Little Rock, consult with the
13 RTC as to allocation of investigative resources for
14 failed savings and loan associations?

15 A No.

16 Q So, is my understanding correct then that
17 you would wait for a referral to come in from one of
18 the agencies before you would take investigative or
19 prosecutive action in your office?

20 A Yes. That is generally correct. There
21 would be times that maybe we would -- people would
22 call us about criminal activity, not knowing who to

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1 call, they would call us instead of some agency. In
2 those instances, I would contact the appropriate
3 agency. But I don't recall that ever happening with
4 RTC.

5 Q Were there any criteria or guidelines that
6 your office followed or that the FBI office in Little
7 Rock followed of which you are aware for determining
8 what failed savings and loans should be investigated,
9 informal or formal?

10 A I don't think our office developed those
11 guidelines. I do think that they concentrated on the
12 savings and loans that lost the most money. I don't
13 know how they came up -- I think Madison was the
14 first referral we got.

15 You have to understand these referrals came
16 in before I got there. But I believe Madison is one
17 of the first ones because McDougal is the first
18 savings and loan person we tried. First South was
19 the next group of referrals we got, and we prosecuted
20 several people in that institution. So that came in
21 second.

22 I don't know why they chose those. Maybe

1 there was no obvious criminal activity there. I have
2 no idea.

3 I don't think those referrals came from
4 RTC. I think they may have come from -- well, it
5 wouldn't have been the RTC then. It would have been
6 the FDIC maybe or the --

7 Q FSLIC?

8 A Yes.

9 Q Do you recall, order of magnitude, the
10 losses associated with First South and Pine Bluff?

11 A It was 50 or \$60 million, I think, of
12 criminal activity, what we felt was criminal
13 activity.

14 MR. COLE: Off the record.

15 (Discussion off the record.)

16 BY MR. COLE:

17 Q If I could rephrase my question, I was not
18 asking the magnitude of the criminal activity that
19 was prosecuted but the losses to the government of
20 the thrift insurance fund, whether RTC or FDIC,
21 associated with the failure of the institution or
22 order of magnitude for First South.

1 A I don't remember the exact order of
2 magnitude. But it was much larger than 60 million.

3 Q Hundreds of thousands of dollars?

4 A Yes.

5 Q The same question for Saver Savings and
6 First Federal?

7 A I don't know. I really don't. I never
8 worked on those referrals. I just don't know.

9 Q Do you know if it was more or less than
10 associated with Madison Guaranty?

11 A I think Madison was a smaller savings and
12 loan, one of the smaller ones. I am answering that
13 in terms of the total loss to the government. I
14 don't think it was smaller in terms of criminal
15 activity, but it was smaller in total dollars lost.

16 Q Do you know whether the RTC in fact
17 conducted any investigation with regard to Saver
18 Savings or First Federal?

19 A I don't know. I haven't seen any
20 indictments since I have been gone.

21 Q Focusing on the time period in which you
22 were in the U.S. Attorney's Office in Little Rock,

1 are you aware of any request from the FBI to the RTC
2 to investigate those institutions?

3 A I don't know of any. I may be telling
4 you -- there was one person we indicted, but I don't
5 think it was a Little Rock savings and loan. I don't
6 recall the name of it. It was possible it was one of
7 those institutions. But I really think it was a
8 smaller institution outside of Little Rock.

9 Q Do you have any knowledge of how the RTC
10 internally determined which failed savings and loans
11 would be the subject of criminal investigation?

12 A I have no idea.

13 Q I believe you testified earlier that you
14 personally did not do what I would call a substantive
15 review of the 1992 criminal referral, and by that I
16 particularly mean reviewing the documents and
17 exhibits that were attached.

18 A That's correct.

19 Q If I understand your testimony correctly,
20 you believe Mr. Banks did at least to some extent
21 perform such a review?

22 A I believe he did.

1 Q Was he assisted by Ms. Cherry in that
2 review or was her analysis a separate analysis for
3 purposes of determining whether there was overlap?

4 A Her analysis was separate. It was not at
5 the same time. I don't know if anyone helped Chuck
6 with that review. Maybe a law clerk or something.
7 But I don't really think any of the other attorneys
8 helped him on that.

9 Q Focusing on the review that Mr. Banks
10 conducted, what do you recall that he concluded from
11 his review?

12 A I think his letter spells that out, that
13 he -- whatever the letter says. He didn't think
14 there was a case against the witnesses and that maybe
15 the check kite portion of it, the main body of it,
16 against the McDougals could be looked into.

17 Q Separate and apart from what the letter
18 says, do you have any recollection of understanding
19 from Mr. Banks if he had a view as to the quality of
20 the referral?

21 A No. I don't think we were critical of the
22 way the referral was written and their investigative

1 technique. I don't think we criticized that at all.
2 As referrals go, that was a fairly normal looking
3 referral, I think.

4 Q Although you testified I believe earlier
5 that that was the first referral that you had ever
6 seen?

7 A But comparing it to referrals I would get
8 from ATF or any other government agency. Different
9 agencies go in different detail when they give a
10 referral. Sometimes the FBI's referral is a phone
11 call. As referrals go, that seemed like a fairly
12 normal referral.

13 Q It would be helpful to me and perhaps for
14 the record for this committee if we could focus on
15 referrals involving failed savings and loan
16 associations because I have some question as to
17 drawing analogies to other agencies.

18 A I don't think I can tell you about
19 referrals on failed savings and loan because I didn't
20 get those. Those were in place before I got there on
21 the cases I'm familiar with. I don't think they came
22 from RTC. They came from the FSLIC.

1 Q If you could help me to be as clear as we
2 can on the record the chronology of what transpired
3 here, going forward from the time that Mr. Banks
4 determined, as set out in his October 16 letter, that
5 his office would not take action on this referral
6 until after the election, proceeding forward to the
7 point in time that Mr. Banks wrote the second letter
8 you referred to, can you tell me what was done with
9 respect to this referral in terms of further
10 investigation?

11 A I don't think I -- I know we didn't issue
12 any subpoenas. I don't think the case was ever
13 assigned to a specific AUSA. So we did nothing.

14 Q Do you know what the FBI did during that
15 time period?

16 A I don't know for sure, but I'm assuming
17 they looked through those documents. They may
18 have -- after the election, they may have tried to
19 talk to Mr. and Mrs. McDougal. Of course, they
20 wouldn't talk to you. That is an absurd notion.
21 Mr. McDougal wouldn't think about talking to the
22 FBI.

1 MR. COLE: Bear with me for a moment. I
2 would like to try and find a document.

3 Off the record.

4 (Pause.)

5 MR. COLE: I don't believe I have any
6 further questions, Mr. Dodson. Thank you.

7 MS. FISHER: No further questions.

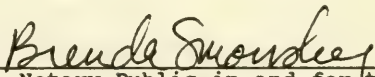
8 (Whereupon, at 2:35 p.m., the deposition
9 was concluded.)

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11 -----
12 F. MAC DODSON
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

64

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 14, 1996

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United States Attorney

Eastern District of Arkansas

Post Office Box 1129

Little Rock, Arkansas 72208

October 16, 1992

(Dictated 10-14-92)

Mr. Don Pettus
Special Agent in Charge
Federal Bureau of Investigation
#2 Financial Center, Suite 200
Little Rock, AR 72211

Re: RTC Referral No. C0004

Dear Mr. Pettus:

This is a followup to my previous meeting with you and my second review of the above referenced referral with supporting documents.

At the time we met, I explained to you my serious reservations about future prosecutions of the individuals involved in the referral. My evaluation of the referral indicates that there is not a prosecutable case capable of being proved beyond a reasonable doubt against any of the witnesses. While participation of some or all of these witnesses certainly suggests poor judgment, possible conflicts of interest or ethical infractions, proving specific intent or knowing criminal conduct would be a prosecutorial burden that could not be carried beyond a reasonable doubt.

The only allegations having any credibility worthy of possible deliberation for investigation exists against Mr. and Mrs. McDougal and Lisa Anspaugh. Even these allegations, combined with Mr. McDougal's previous acquittal, his present mental state along with no prospect of recovering lost monies from the institution have serious negative attributes for a successful prosecution of these insiders.

I am now advised that you have been ordered to do an immediate review to determine if an investigation is warranted. As part of same, you are required to send a prospective proposal for such investigation by Friday, October 16, 1992. Such an order does not apply to this office.

However, I do believe it might be helpful to reiterate what I have told you previously. Neither I personally nor this office will participate in any phase of such an investigation regarding the above referral prior to November 3, 1992. You may communicate this orally to officials of the FBI or you should feel free to make this part of your report.

Mr. Don Pettus
Page 2

While I do not intend to denigrate the work of RTC, I must opine that after such a lapse of time the insistence for urgency in this case appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election. You and I know in investigations of this type, the first steps, such as issuance of grand jury subpoenas for records, will lead to media and public inquiries of matters that are subject to absolute privacy. Even media questions about such an investigation in today's modern political climate all too often publicly purports to "legitimize what can't be proven."

For me personally to participate in an investigation that I know will or could easily lead to the above scenario and to the possible denial of rights due to the targets, subjects, witnesses or defendants is inappropriate. I believe it amounts to prosecutorial misconduct and violates the most basic fundamental rule of Department of Justice policy. I cannot be a party to such actions and believe that such would be detrimental to the Department of Justice, FBI, this office and to the President of the United States.

In due time, I will be happy to meet with you to discuss a limited examination and possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and Ms. Anspaugh. In the event I conclude that their case should be declined, which at this point is a distinct possibility, the DOJ can certainly override that decision and commit Department of Justice personnel and resources to both the investigation and prosecution of the case.

For your information, in the event I receive any press inquiry from any source whatsoever I am going to refer them to the supervisory officials in the Department of Justice and/or Resolution Trust Corporation.

Thank you.

Best Regards,

CHARLES A. BANKS
United States Attorney

CAB:bv

cc:

Floyd Mac Dodson
Executive Assistant U.S. Attorney

Late 1991
to
Early 1992

SSA requested JEAN LEWIS, RTC, work on preparing referrals for SAVERS and 1st Federal, both failed institutions located in Little Rock. RTC was advised FBI was not interested in referrals on institutions where we had previously had prosecutions as much as we were with institutions which had been unaddressed for some time.

March ?

Newspaper article appeared discussing the Clintons partnership with JIM McDOUGAL in Whitewater Development Corp., and the failure of MADISON GUARANTY. Also mentioned a letter HILLARY or Rose Law Firm wrote to Arkansas Securities Commission asking for no action on some issue concerning MADISON.

Within two
weeks

JEAN LEWIS of RTC contacted FBI Little Rock (Aaron) review our investigation. She also examined the records of MADISON which were stored in the Outlet Mall on I-30 along with records of most of the other failed Arkansas S&Ls (RTC custody). LEWIS advised IRONS she was called off her work on the SAVERS/FIRST FEDERAL referral to work on the allegations in the news article. Either RTC in Washington or regional RTC headquarters in Kansas City had seen the article and asked if RTC had the records of MADISON. When they learned they did, they wanted the CLINTON angle investigated to make sure they hadn't missed something.

Within next few
weeks

FBI (IRONS) contacted LEWIS's supervisor to ask if they had discovered something that looked like it would be basis for a referral and CLARK WALTON said yes.

Over next few months RTC (Lewis) apparently advised several AUSAs and FBI employees of what she was working on.

Mid August, 1992

LEWIS advised FBI the referral was almost complete. Her superiors gave her a deadline 8/31/92 without fail. She advised she gave up a job opportunity in Washington in order to complete the referral, noting she might change the course of history.

FBI-00001526

DATE 00000495

MCP-30-1994 17:40

MC 106LITTLE ROCK

501 221 6706 P.06

Around 8/31 FBI talked to LEWIS, who advised she was almost done and would overnight the package when complete.

9/2/92 Referral received from RTC. USA received his copy same date.

Next day or so Spoke to USA who wanted us to take no action until we had time to discuss it due to sensitivity. (Previous conversations that it was coming had occurred)

Next few days RTC began to call and ask what FBI was doing with the referral.

9/9/92 RTC leaves phone message complaining FBI return calls and give status report.

9/10/92 RTC was advised no decision by USA and FBI was not going to be in a position to give status reports when he did.

9/16/92 Lewis of RTC meets with SAs and AUSAs on another case. Prior to she asked me what status of MADISON was. Told her not decided, but meeting was scheduled with USA.

After her meeting she waited for me. She again asked for status and was told she would have to ask USA. She advised her boss, Richard Iorric, kept asking her to try to find out what we were doing. I reminded her of sensitivity and that, even if USA decided to go forward, these cases took longer than a month to determine what was there. She advised everyone above her in RTC was aware of referral and it was approved at Washington before going out. She apologized for asking repeatedly but said her superiors kept telling her to find out what we were doing what we were doing with the case. She was any communication would have to come from the USA and FBI would not even tell her when the meeting to discuss it took place, much less the outcome. Told her to deal directly with USA and cut FBI out. Also observed she and RTC had no reason or need to know. She offered assistance if needed.

9/23/92 FBI and USA meet, no action taken pending further review by USA. FBI-00001527

10/6/92 First Assistant USA advises they are going to notify DOJ they received referral. Also

MEF-20-1994 13:40

MC 106 LITTLE ROCK

501 221 8708 PLOT

advised JEAN LEWIS of RTC now calling him. She called and said she didn't mean to pester him but it was standard to make a followup contact six weeks after any referral to make sure it was received and find out if any clarification or assistance was needed.

FBI-00001528

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

155

TRANSMIT VIA:

☒ Teletype

PRECEDENCE:

☐ Immediate
☒ Priority
☐ Routine

CLASSIFICATION:

☐ TOP SECRET
☐ SECRET
☐ CONFIDENTIAL
☐ UNCLAS E F T O
☒ UNCLAS

DATE: 10/9/92

PAGE 1 OF 2

FM DIRECTOR FBI

TO FBI LITTLE ROCK/PRIORITY/ (29A LR-2459)

BT

UNCLAS

CITE: //0624//

SUBJECT: JAMES B. MCDUGAL; SUSAN H. MCDUGAL; LISA ANSPAUGH;
UNSUB(S); MADISON GUARANTY SAVINGS AND LOAN, LITTLE ROCK,
ARKANSAS; FIF; 00: LITTLE ROCK.

RE TELCAL FROM SSA KEVIN B. KENDRICK, FBIHQ, TO SSA STEVE
IRONS, LITTLE ROCK, 10/8/92, AND TELETYPE FROM LITTLE ROCK TO THE
BUREAU, 10/7/92.

AS DISCUSSED IN RETELCALL, AN FIF INVESTIGATION IS WARRANTED
IN CAPTIONED MATTER. THEREFORE, LITTLE ROCK SHOULD INITIATE A
LIMITED INVESTIGATION AIMED AT DETERMINING THE EXTENT OF

29A LR-2459-2

NOTE: Copy Designations Are On The Last Page Of This Teletype!!!
FOR COMM CENTER USE ONLY

Approved By

MRI/JUL

Transmitted

ISN

FBI-00000523

DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

^PAGE 2 UNCLAS

VIOLATIONS AS ALLEGED IN THE RESOLUTION TRUST CORPORATION (RTC)
CRIMINAL REFERRAL FORM, DATED 9/1/92.

LITTLE ROCK SHOULD OBTAIN FROM THE UNITED STATES ATTORNEY
AND REVIEW THE DOCUMENTS REFERENCED IN THE CRIMINAL REFERRAL.
IN ORDER TO PROTECT THE IDENTITIES OF PASSIVE INVESTORS AND/OR
WITNESSES, LITTLE ROCK SHOULD NOT CONDUCT ANY OVERT INVESTIGATION
SUCH AS WITNESS INTERVIEWS OR SERVING OF GRAND JURY SUBPOENAS AT
THIS TIME. IN ADDITION, THE DOCUMENTS SHOULD BE AFFORDED
APPROPRIATE SECURITY SO AS TO MAINTAIN THE PRIVACY OF THE
WITNESSES.

LITTLE ROCK IS REQUESTED TO SUBMIT RESULTS OF THIS LIMITED
INVESTIGATION AND ANTICIPATED INVESTIGATIVE AND PROSECUTIVE PLANS
BY COB, 10/16/92, TO FBIHQ, WCCS, FIFU, ATTENTION: SSA KEVIN B.
KENDRICK.

BT

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DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
COMMUNICATION MESSAGE FORM

PAGE 3

ADMINISTRATIVE NOTE/TICKLER COUNT:

ON 9/1/92, THE LITTLE ROCK DIVISION RECEIVED A CRIMINAL REFERRAL FORM FROM THE RTC ALLEGING WIDESPREAD FRAUDULENT CHECK-KITING ACTIVITY, LISTING PRESIDENTIAL CANDIDATE BILL CLINTON AND HIS WIFE, HILLARY, AS POTENTIAL WITNESSES. ON 10/8/92, BUREAU OFFICIALS MET WITH ASSISTANT AG ROBERT MUELLER AND SPECIAL COUNSEL, IRA RAPHAELSON, OF THE DOJ. AAG MUELLER ADVISED THAT DOJ DID NOT HAVE ENOUGH INFORMATION AT THIS TIME TO RENDER ANY KIND OF OPINION AND THAT FBIHQ SHOULD MAKE A DETERMINATION REGARDING AN INVESTIGATIVE COURSE OF ACTION. AAG MUELLER ADDED THAT THIS MATTER SHOULD NOT BE TREATED ANY DIFFERENTLY THAN ANY OTHER SIMILAR FIF INVESTIGATION ADDRESSED BY THE FBI AND DOJ.

Drafted By: KBK:amp Room/TL #: 3541/231 Phone No: 5656

COPY DESIGNATIONS:

1 - MR. VERINDER

1 - MR. KUBIC

1 - MR. DICK

1 - MR. KENDRICK

FBI-00000525



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

10825 Financial Centre Pkwy., #200
Little Rock, Arkansas 72211
December 15, 1997

Ms. Jean Lewis
Investigator
Resolution/Trust Corporation
Kansas City Consolidated Office
4900 Main Street
P.O. Box 419570
Kansas City, Missouri 64141

Dear Ms. Lewis:

This letter will acknowledge receipt of Resolution Trust Corporation (RTC) Criminal Referral #C0004.

At the request of Assistant United States Attorney (AUSA) Floyd Mac Dodson, Eastern District of Arkansas (EDAR), who is also in receipt of the referral and attached exhibits, any inquiry from your agency should be directed to him.

Thank you for your assistance in this matter.

Sincerely,

Don K. Pettus
Special Agent in Charge
FBI, State of Arkansas

1 - Addressee
1 - USA, EDAR
1 - 29-0
SDI/sdi

21-0-4-1

1*

FBI-00001077
TME-00000042

**DEPOSITION OF DONALD B. MACKAY
IN RE: S. RES. 120**

WEDNESDAY, OCTOBER 18, 1995

**U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
*Washington, DC.***

Deposition of DONALD B. MACKAY, called for examination pursuant to notice of deposition, at 10:20 a.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

**MICHAEL CHERTOFF, Esq.
Majority Special Counsel
H. CHRISTOPHER BARTOLOMUCCI, Esq.
Majority Associate Special Counsel
LOUIS J. GICALE, Esq.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.**

**CHARLES J. SGRO, Esq.
Special Assistant to the Deputy Attorney General
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530
On behalf of the Deponent.**

ALSO PRESENT: TIMOTHY P. MITCHELL

CONTENTS

WITNESS	EXAMINATION
Donald B. Mackay	
by Mr. Chertoff	3
by Mr. Ben-Veniste	61
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EXHIBITS

DEPOSITION NUMBER	IDENTIFIED
Donald B. Mackay	
DBM Exhibit 1	60, 2214
DBM Exhibit 2	61, 2288
DBM Exhibit 3	109, 2289
DBM Exhibit 4	124, 2292

1 PROCEEDINGS

2 Whereupon,

3 DONALD B. MACKAY

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 EXAMINATION

7 BY MR. CHERTOFF:

8 Q Mr. Mackay, my name is Michael Chertoff.
9 I'm the Special Counsel to the Senate committee
10 investigating Whitewater, and I'm just going to give
11 you a little bit of an introductory description of
12 what we're doing here before we get started with the
13 deposition.14 Mr. Ben-Veniste is the special counsel
15 representing the Democrats in this inquiry.16 As you probably are aware, the deposition
17 here is being conducted pursuant to Senate Resolution
18 120 which establishes this committee to investigate
19 Whitewater Development Corporation and certain other
20 related matters.21 As part of that resolution, we are
22 authorized to investigate and hold hearings into

4

1 whether there were improprieties in the handling of
2 RTC criminal referrals relating to Madison Guaranty
3 in 1993 and 1994.4 We are going to have public hearings in the
5 near future on this. This deposition may lead to
6 your being called as a witness in the public
7 hearing. It may not. That's something we won't know
8 for a while. We will let you know certainly if
9 you're going to be called as a witness at the
10 hearing.11 Like with any deposition, I'm going to ask
12 you questions which you have to answer under oath.
13 If you don't understand a question, let me know and
14 I'll rephrase it. I would ask you not to speculate
15 or guess, unless I specifically ask you to speculate
16 or guess.17 We'll have a record of the questions and
18 answers, which will be treated as committee
19 confidential until the commencement of the hearings.
20 Once the hearings begin, some or all of the
21 deposition may be released publicly. In any event, I
22 anticipate at the end of the process all the

1 depositions will become public.

2 You will have an opportunity before the
3 hearing to come and look at your deposition with
4 Mr. Sgro in order to make any corrections you want in
5 the transcript, although I should advise you if you
6 make any corrections apart from ministerial or
7 clerical clarifications, that could be the subject of
8 a redeposition.

9 If, in fact, you are called as a witness,
10 you will be sent a copy of your transcript four days
11 in advance of your testimony so you can have it to
12 prepare on the condition that you agree not to
13 disseminate it to anybody else except your counsel.

14 I understand that Mr. Sgro is representing
15 you, not personally, but as an employee of the
16 Department of Justice; is that correct?

17 A I don't believe so.

18 Q He's representing the department?

19 MR. SGRO: The Department of Justice.

20 BY MR. CHERTOFF:

21 Q If you want to take a break and talk to
22 Mr. Sgro, let us know and we'll go off the record.

1 He may raise objections. If he does, we'll address
2 those objections and then you can go ahead and answer
3 the question.

4 There are two types of objections which
5 would result in an instruction to you or might result
6 in an instruction to you not to answer. One is if
7 there's a privileged issue and the other is if the
8 question is deemed beyond the scope of the
9 resolution. If we can't work an objection like that
10 out, you may be instructed not to answer. Ultimately
11 on questions such as those, the committee chairman
12 has the final ruling on whether the question should
13 be answered or not.

14 Is there anything about what I've told you
15 that you have a question about?

16 A No.

17 Q Mr. Mackay, you're currently an employee of
18 the Department of --

19 MR. SGRO: Excuse me. Can I make a short
20 statement before you begin?

21 MR. CHERTOFF: Sure.

22 MR. SGRO: I wanted to reference the fact

1 that Mr. Mackay is appearing voluntarily and pursuant
2 to the guidelines set forth in the October 10, 1995
3 letter sent to Mr. Giuffra and Mr. Cole of the
4 committee wherein the department stressed its concern
5 of having a career prosecutor appear for this type of
6 a deposition, and that we expect the questions to
7 focus solely upon factual matters that Mr. Mackay was
8 involved in and not matters involving prosecutorial
9 decisions.

10 MR. CHERTOFF: That's good that you put
11 that on the record, and I'll state from my standpoint
12 what I intend to ask really are fact questions, who
13 said what to whom, when, where. I'm not going to be
14 asking for your opinion about things or what your
15 internal processes of decisionmaking were. I
16 understand that's a concern.

17 MR. SGRO: It's not to reflect that we
18 anticipate any problems, but I thought it should be
19 put on the record.

20 MR. CHERTOFF: I don't think that's within
21 the scope of what we're doing here.

22 BY MR. CHERTOFF:

1 Q You're currently an employee of the
2 Department of Justice?

3 A Yes.

4 Q In what section do you work?

5 A The fraud section of the criminal division.

6 Q How long have you been with the fraud
7 section?

8 A Just about four years.

9 Q And I gather at some point in the 1970s you
10 were the United States Attorney for the Southern
11 District of Illinois?

12 A Right.

13 Q I'd like to direct your attention to 1993.
14 Were you working at the fraud section in 1993?

15 A Yes.

16 Q Generally speaking, in the latter half of
17 that year, what were your responsibilities within the
18 section?

19 A Basically to conduct investigations and try
20 cases involving financial institution fraud and
21 securities fraud.

22 Q Were you based in Washington?

1 A Yes.

2 Q Did there come a time in the latter half of
3 1993 that you were made aware of an investigation
4 into an institution known as Madison Guaranty?

5 A Yes.

6 Q How did you first become aware of that?

7 A Well, in early September of 1993, I had a
8 meeting with Allen Carver, who was the principal
9 deputy chief of the section, and John Arterberry, who
10 was the deputy chief for financial institution
11 fraud.

12 At that time, the information related to me
13 did not involve Madison Guaranty as the principal
14 focus, but Madison Guaranty was mentioned in that
15 discussion. It wasn't until, I believe, October of
16 1993 that we received copies of the nine RTC
17 referrals involving Madison Guaranty.

18 Q What was the specific principal subject of
19 your discussion in September 1993 with Mr. Carver and
20 Mr. Arterberry?

21 A At that time, I was told by Mr. Carver that
22 there was an SBA fraud case -- or fraud

10

1 investigation, I should say, pending in the Eastern
2 District of Arkansas against a target named David
3 Hale, who I was told was a municipal judge in Little
4 Rock.

5 It was related to me by Mr. Carver that a
6 reporter from The New York Times, I believe, had
7 contacted someone in the Deputy Attorney General's
8 office and had told them that David Hale had either
9 directly or through his attorney contacted the
10 reporter and made suggestions that the President was
11 involved during the time that he was the governor of
12 Arkansas in trying to obtain an SBA loan to benefit
13 Whitewater Development Corporation.

14 Q As a consequence of having received this
15 information through a reporter, what, if anything,
16 did Mr. Carver or Mr. Arterberry request of you in
17 terms of your performing any assignment?

18 A At that time, no specific request or
19 direction was given to me. I was told that I was
20 being given a heads-up, that there was a possibility
21 that at sometime in the future the fraud section of
22 the criminal division might become actively involved

1 in the prosecution or investigation of the David Hale
2 matter.

3 Q What, if anything, was said to you about
4 the reason it was anticipated the fraud section might
5 become involved in the case?

6 A I believe that there was a suggestion --
7 strike that -- maybe a concern that the then-United
8 States Attorney for the Eastern District of Arkansas
9 would recuse herself and possibly her office from any
10 further involvement in the David Hale matter.

11 Q After this discussion in September up
12 until, let's say, the beginning of November, did you
13 have any further discussions with anybody at the
14 fraud section concerning this David Hale case?

15 A I believe that perhaps late in September, I
16 had another short discussion with Allen Carver, and
17 to the best of my recollection, it involved the
18 question as to whether or not there would be a
19 recusal. I believe I was told that that question
20 hadn't been resolved yet.

21 Then in October -- and I'm guessing at this
22 because I don't have any real specific dates -- I

1 want to say roughly the middle, third week in October
2 I received, either from Allen Carver or Jerry
3 McDowell, who was at that time the chief of the fraud
4 section, copies of the nine new RTC referrals.

5 Q Now, these referrals were separate and
6 distinct from the Hale case?

7 A Yes. They had nothing to do with the Hale
8 case as such.

9 Q And why were those presented to you?

10 A I believe that there was some thought at
11 that time that the fraud section would become
12 actively involved in pursuing the investigation and
13 any potential prosecution arising out of those nine
14 referrals.

15 Q Those referrals came from the RTC?

16 A Yes.

17 Q During September and October, were you
18 directly involved in any conversations with Ms. Casey
19 concerning the issue of recusal?

20 A No.

21 Q Other than what you've testified to, which
22 to summarize, and obviously not verbatim, is your

1 having been told that recusal was a possibility, were
2 you involved in any meetings with either Mr. Keeney,
3 the acting head of the criminal division, or with the
4 Deputy Attorney General about the issue of recusal
5 from Ms. Casey?

6 A No.

7 Q Did there come a time where you actually
8 were assigned to either the Hale matter or any of the
9 referrals about which you've previously testified?

10 A Yes.

11 Q When was that?

12 A That was, I believe, November the 8th,
13 November the 9th of 1993.

14 Q And directing your attention to the period
15 shortly before that, did you become aware of a -- or
16 were you made aware of a meeting that was planned
17 between Ms. Casey and senior officials at the
18 Department of Justice?

19 A I did become aware that Paula Casey had
20 been in Washington and had met, yes, with some senior
21 officials of the department about the question of
22 recusal. I sort of had the impression that I became

1 aware of that after the fact.

2 Q How did you become aware of that?

3 A I was told that probably by Allen Carver,
4 possibly by Jerry McDowell.

5 Q And what, if anything, did they tell you
6 about those meetings with Ms. Casey?

7 A The only thing that I recall or that stands
8 out in my mind is that I was told that Paula Casey
9 was resisting the suggestion that she recuse.

10 Q Whose suggestion?

11 A I have to make an assumption here, and my
12 assumption was that it was the suggestion of Jack
13 Keeney and possibly people in the deputy's office.

14 Q Did there come a time shortly after you
15 heard this information about the meeting between
16 Ms. Casey and senior officials at the department,
17 that you learned that Ms. Casey had recused herself,
18 in fact?

19 A Yes.

20 Q And how did you then come to be assigned to
21 the matter?

22 A I was told by I believe it was Jerry

1 McDowell that Paula Casey had submitted a recusal
2 request to the office of the Deputy Attorney General,
3 and I believe I was told that she submitted that by
4 hand-delivery while she was in Washington, but that
5 there was some -- I don't know what the word is
6 here -- they couldn't find it and Mr. McDowell had
7 been assured presumably by somebody in the deputy's
8 office that the recusal letter had, in fact, been
9 submitted. And although we hadn't seen it, or he
10 hadn't seen it, he was basically relying on the
11 representation that it had been submitted.

12 Q Were you, in fact, shortly thereafter
13 assigned to take responsibility for the investigation
14 of the Hale matter and the referrals involving
15 Madison Guaranty?

16 A Yes.

17 Q Who actually made that assignment?

18 A It was either Allen Carver or Jerry
19 McDowell. It might have been both.

20 Q Were there other prosecutors assigned to
21 work with you on that matter?

22 A Yes.

1 Q Who?

2 A Dwight Bostwick, B-o-s-t-w-i-c-k, and James
3 Nixon.

4 Q What were you assigned to do in connection
5 with these investigations?

6 A We were instructed to go to Little Rock to
7 work with the FBI in terms of conducting
8 investigations into the nine criminal referrals by
9 the RTC and to take over the prosecution of the David
10 Hale case.

11 And I might, just for clarity's sake here,
12 point this out, that at the time back in September
13 that I had spoken -- when I initially spoke with
14 Allen Carver, the David Hale matter had not yet been
15 indicted. By the time I was assigned to the matter
16 in November, David Hale had been indicted. There was
17 then a pending indictment.

18 And I also should add, just so there's no
19 confusion here, that at the September meeting with
20 Allen Carver, there was an observation by Carver that
21 it was uncertain as to whether the United States
22 Attorney's office was going to recuse -- this is just

1 regarding the David Hale matter -- or whether or not
2 the fraud section would work jointly with the United
3 States Attorney in that matter.

4 I believe I was told that if the fraud
5 section went down to the Eastern District of Arkansas
6 to work the David Hale matter, that we would not, or
7 should not expect to experience resistance by the
8 United States Attorney or anyone in the office.

9 But keep in mind this was a time that the
10 case hadn't been indicted. When I was finally
11 assigned to it, the case had been indicted.

12 And prior to being told that Paula Casey
13 and her office were recusing, I recall some
14 discussions with Allen Carver concerning the question
15 as to whether or not Paula Casey in the office would
16 recuse only on the nine RTC referrals or whether they
17 would recuse on the referrals and the David Hale
18 case. We later learned that the recusal was
19 complete, that it encompassed not only the nine RTC
20 referrals, but the David Hale case as well.

21 Q During your discussions with people in main
22 Justice in Washington concerning whether or not

18

1 Ms. Casey would recuse herself and her office, did
2 anyone ever tell you the grounds that were being
3 considered for this possible recusal?

4 A My recollection is that the appearance of
5 impropriety in that -- maybe I ought to say the
6 appearance of a conflict in that Paula Casey was a
7 presidential appointee who had very recently been
8 appointed by President Clinton and the suggestions by
9 David Hale -- as well as Mrs. Clinton, may have been
10 involved in some inappropriate conduct involving
11 Whitewater and Madison Guaranty and David Hale's
12 small business investment company.

13 My understanding -- my impression -- and I
14 know you don't want speculation, and I --

15 Q Just your best recollection.

16 A My impression was that there was a concern
17 that there would be an appearance of a conflict,
18 whether or not there, in fact, existed such a
19 conflict.

20 Q Apart from the relationship, if any,
21 between Ms. Casey and the President and Mrs. Clinton,
22 were there any other relationships she had that were

1 mentioned to you before you actually went down to
2 Little Rock as being possible causes for concern
3 about an appearance of a conflict?

4 A The only other one that might have been
5 would have been a relationship with the then-governor
6 of Arkansas Jim Guy Tucker, but I cannot tell you
7 definitively that that was told to me by anybody in
8 the Department of Justice before I went down to
9 Little Rock.

10 Q Now, after you were assigned to take over
11 the Hale matter and the referrals regarding Madison
12 and other entities and other individuals, did you, in
13 fact, go down to Little Rock to meet with the United
14 States Attorney?

15 A Yes.

16 Q And did you meet personally with Ms. Casey?

17 A Yes.

18 Q When was that?

19 A I believe it was November the 8th or
20 November -- I believe it was November the 8th.

21 Q Where did you meet with her?

22 A I met with her in her office.

20

1 Q And how long was the meeting?

2 A Maybe an hour.

3 Q Was there anybody else in attendance
4 besides yourself and Ms. Casey?

5 A No.

6 Q What did you and she discuss?

7 A Basically, I was interested in getting the
8 file on the David Hale matter. She had talked with
9 me about conversations or discussions that she and
10 her first assistant, a fellow named -- I think his
11 last name was Johnson, the discussions that they had
12 previously had with Randy Coleman, who was the
13 attorney representing David Hale.

14 She also talked with me about
15 correspondence between the United States Attorney's
16 office and Randy Coleman concerning the disposition
17 or a possible disposition of the David Hale
18 investigation.

19 But let me back up here a little, if I may,
20 so you can get the complete picture. Before I went
21 to Little Rock, I had a series of telephone
22 conversations with Paula Casey, and this was the day

1 before I left. It was late in the afternoon. I had
2 been told, I believe, by Jerry McDowell that recusal
3 was in existence. They wanted me to go to Little
4 Rock.

5 I was to contact Paula Casey. I was given
6 a phone number and was basically told to contact
7 Paula Casey and make arrangements for me to go to
8 Little Rock and meet with her. So I called her, and
9 we agreed for me to go to Little Rock, I believe it
10 was the following day or maybe two days later. I
11 can't be more specific than that.

12 Paula Casey told me that she had some
13 discussions earlier that day with Randy Coleman. I
14 believe she also told me that she had that day
15 received a two- or three-page letter from Mr. Coleman
16 setting forth what he wanted or what he wanted on
17 behalf of his client.

18 Paula Casey called me back later that
19 afternoon to tell me that she had received yet
20 another written communication from Coleman regarding
21 this. And she seemed to be a little agitated or
22 excited. She read it to me over the phone.

1 The only thing I remember telling her was,
2 when we get together, why don't you give me the
3 letter and we'll talk about it then.

4 Q Let me just focus your attention, before we
5 get to your trip down, to the telephone calls. These
6 telephone calls occurred after you had taken over the
7 case; correct?

8 A Yes.

9 Q And it was the process of your arranging
10 with Ms. Casey to get the information necessary for
11 you to assume your responsibilities?

12 A Yes.

13 Q You said a moment ago in the conversations
14 you had with her, either a day or two days before you
15 went down to Little Rock, concerning correspondence
16 she had received from Mr. Hale's attorney, that she
17 was agitated. Can you tell us, as best you can, what
18 she said concerning what she was agitated about?

19 A My use of that term -- let me just say
20 this. Paula Casey didn't say to me that "I'm
21 agitated."

22 Q I understand. I take it it's your

1 impression from her demeanor.

2 A Exactly. She seemed excited. Maybe the
3 more correct characterization is rather than
4 agitated, frustrated. The impression I got was that
5 Randy Coleman, David Hale's attorney, was papering
6 her to death and that he was pushing her to recuse,
7 among other things.

8 I believe earlier on he had tried to
9 persuade her to enter into a plea agreement with
10 Mr. Hale. Mrs. Casey and her office did not do
11 that. I believe Hale -- excuse me, Coleman, Hale's
12 attorney, then escalated his pressure campaign, if
13 you want to put it that way, and started becoming
14 critical of Paula Casey in terms of Paula Casey even
15 staying on the case.

16 My recollection is that perhaps Hale or his
17 attorney, Randy Coleman, was making a last ditch
18 effort to try to work out a plea agreement for his
19 client, David Hale.

20 Q Now, this, of course, is after the
21 indictment has come down?

22 A Oh, yes, yes.

1 Q When you went down to Little Rock, did you
2 have any further conversation with Ms. Casey in your
3 meeting with her concerning her discussions with
4 Mr. Coleman?

5 A Yes.

6 Q What was that conversation?

7 A As I recall, she flushed it out a little
8 bit more than she had on the phone. She seemed more
9 composed, less excited. I remember her telling me
10 that she was displeased with the way she had been
11 treated by high-ranking officials within the
12 Department of Justice concerning the recusal.

13 Q What did she say then?

14 A I can't give you her exact words.

15 Q In general, as best as you can.

16 A Other than the fact that she expressed
17 displeasure. She said she was mad or irritated or
18 annoyed or words to that effect.

19 Q Did she indicate she was irritated about
20 whether they were courteous with her, or was she
21 irritated that she felt she had been pushed into
22 recusal herself?

- 1 A She was irritated -- she expressed
2 displeasure, irritation, if you want to put it that
3 way, at being pressured into recusing.
4 Q Did she say who pressured her?
5 A I don't think she did.
6 Q Was it your understanding from the
7 conversation that she was referring to the meetings
8 she had had with senior officials at the department
9 earlier in the month of November?
10 A Yes.
11 Q Did she indicate to you in this
12 conversation in Little Rock that she personally still
13 had a doubt about whether she should have recused
14 herself?
15 A No, not at that point. She had done it.
16 Q Did she indicate to you the basis on which
17 she recused herself during this meeting you had with
18 her in Little Rock?
19 A The only thing I can think of that she
20 might have said was -- yes, it's coming back to me --
21 she said basically she didn't know the President that
22 well. I think he had been -- while she was attending

- 1 law school, he was teaching there part-time or
2 something, and that's how she knew him. I think she
3 mentioned that she might have done some minor work on
4 his campaign, but she wasn't a big campaign worker.
5 I think she mentioned that -- I know she
6 told me this at some point in time -- that she was a
7 friend of Governor Tucker's wife, and the reason for
8 the recusal was an appearance of conflict.
9 Q Did she indicate that that appearance
10 related to her friendship with Governor Tucker's
11 wife, or that it related to other relationships or
12 friendships as well?
13 A I don't think she was specific about it.
14 Q What, if anything, did she indicate about a
15 relationship or a friendship that she or anybody she
16 was close to had with Seth Ward?
17 A I don't think there was any discussion
18 about Seth Ward. I can't be sure because at that
19 time, I doubt whether I would have known who Seth
20 Ward was.
21 Q Now, in the meeting you had with Ms. Casey
22 in Little Rock, you've described her statements

1 regarding the issue of recusal. You've described her
2 statements regarding her prior course of dealing with
3 Mr. Hale's attorney. What else, if anything, did she
4 talk to you about?

5 A At some point she mentioned that her office
6 had recused -- excuse me, that's the wrong word --
7 had declined prosecution on an earlier RTC referral
8 involving Madison Guaranty, James McDougal and a
9 bunch of folks from Madison. That is what I called
10 the September 1992 referral. Other people call it
11 other things. They refer to it by its referral
12 number. I can't remember all these numbers.

13 I remember she said to me that apparently
14 there had been some suggestion or suggested criticism
15 for the declination of that, and I believe that
16 criticism was coming out of the RTC, and I remember
17 Paula telling me at the time I don't know why they're
18 all upset because the declination of that matter was
19 approved at the highest levels at the criminal
20 division, and I believe she mentioned Jack Keeney,
21 who was the acting Assistant Attorney General as
22 having communicated with her -- with her office at

1 least, by memo saying, in effect, if you want to
2 decline this case, go ahead. It's not going to
3 bother us. She said so we declined the case and now
4 everybody is up in arms about it.

5 Q Did she indicate to you that she had made
6 the decision to decline the case?

7 A No.

8 Q Did she indicate to you that her office had
9 made the decision to decline the case?

10 A I'm not sure that there was any allocation
11 of responsibility for that decision. I believe she
12 used the editorial "we." I didn't ascribe that to
13 being her personally or someone in her office other
14 than her.

15 Q Did you ascribe it to having been someone
16 in main Justice? In other words, did she say to you
17 that the case was actually declined by the Justice
18 Department in Washington as opposed to either her or
19 one of her assistants in Little Rock?

20 A I don't think that that came up. I don't
21 think it was put that way. My recollection was more
22 Keeney said it wouldn't bother them if we declined

1 the case, and that was about all of it. Keep in mind
2 at that time, I had no idea that there had been an
3 early referral. This was the first I had heard about
4 it. Nobody told me.

5 Q Did there come a point in time in early
6 1994 that your responsibility for the case was
7 transferred to somebody else?

8 A Yes.

9 Q When was that?

10 A It was -- I ought to remember this date.

11 Q Give us an approximation.

12 A I want to say around the 13th, 14th, 15th
13 of January of 1994. The Attorney General had made a
14 statement to the media that she was going to appoint
15 a special prosecutor. I remember I was sitting in an
16 airport lounge in Memphis on my way back to
17 Washington when it came on the evening news. I can't
18 tell you the date. I'm sorry.

19 Q During the period of time you were on the
20 case, which I gather is approximately two months, how
21 much time did you spend in Little Rock as opposed to
22 Washington?

30

1 A I would have to say I spent roughly 80
2 percent of my time in Little Rock.

3 Q Did you yourself have conversations with
4 Mr. Coleman concerning plea negotiations over
5 Mr. Hale?

6 A Yes.

7 Q How many did you have?

8 A Well, I had at least one meeting and I
9 believe two meetings with Mr. Coleman, and I had a
10 number of telephone conversations with Mr. Coleman.
11 Some of those were conversations of some substance.
12 Others were simply to set up a time to talk.

13 Q During the time you were responsible for
14 these cases, did you actually conclude an agreement
15 with Mr. Hale's attorney?

16 A I was unable to do that.

17 Q Without going through it blow by blow, can
18 you tell us generally, at that time you were
19 involved, where were the two of you in terms of the
20 positions you were taking about what was going to be
21 acceptable in terms of a disposition?

22 A We were very close to coming to an

1 accommodation which would have been acceptable to
2 both of us.

3 Q And is it fair to say the reason that
4 didn't happen was that your participation was
5 overtaken by the appointment of Mr. Fiske?

6 A Yes.

7 Q During the course of time that you were
8 involved in this matter, say, between the beginning
9 of November and the beginning of January, did you
10 come to hear of a claim or an allegation that at an
11 earlier point in time a lawyer from Little Rock had
12 gone to Washington in order to try to get the case
13 against Mr. Hale taken care of or dismissed or
14 resolved in some way?

15 A Yes, I did hear that.

16 Q How did you hear that?

17 A I believe I heard it from Mr. Coleman.

18 Q And what did Mr. Coleman tell you?

19 A I'm getting things confused here.

20 Q Take your time.

21 A Give me a second. It's all running
22 together.

1 Q If you want to withdraw your answer and
2 reflect further, go ahead.

3 A I may have learned this from the FBI. My
4 understanding is -- my recollection is that it was --
5 Mr. Coleman -- let me see if I've got this right.
6 Somebody, a lawyer from Little Rock called someone in
7 the White House counsel's office -- bear with me.

8 Q That's fine. If it would help to take a
9 break for five minutes --

10 A If it's not coming now, it's not going to
11 come. There was a telephone call from a Little Rock
12 lawyer to, I believe, a man named Kennedy who was at
13 that time in the White House counsel's office, and I
14 believe Kennedy -- William Kennedy, I think, had
15 previously been one of the managing partners at a law
16 firm in Little Rock.

17 And I want to say that it was Coleman who
18 made the phone call, but I'm not 110 percent sure
19 that it was Coleman. I believe it was. And he
20 basically told either Kennedy or someone else in the
21 White House counsel's office that David Hale was
22 making noises that the President had some involvement

1 with some questionable SBA loan that somehow was
2 going to benefit Whitewater, Whitewater Development
3 Company.

4 And this lawyer from Little Rock, who I
5 believe was Coleman, was basically rebuffed by
6 Kennedy or whoever he spoke with in the White House
7 counsel's office. The impression I got was whoever
8 the caller was, was saying hey, you guys better put a
9 lid on this, curb your dog, whatever. And the caller
10 was told we're not doing anything. Don't call us.
11 This is not our problem.

12 I cannot tell you the source of that. I
13 mean, I can't tell you who told me that, but I
14 learned it somehow.

15 Q Did there come a point in time that you or
16 anyone on your team examined or asked the FBI to
17 examine the issue of SBA documents having been given
18 to the White House counsel's office?

19 A Yes.

20 Q And when did you first become aware of
21 that?

22 A Whenever it occurred. I mean, I want to

1 say late November, but I can be wrong. I had --
2 okay. I had learned that the SBA had prepared a
3 report on whatever David Hale's small business
4 investment company was.

5 Q Capital Management Services?

6 A Capital Management Services, okay. That
7 they had prepared a report on that, and that report
8 was being prepared or had been prepared for
9 submission to Congressman LaFalce's committee, and I
10 can't remember what that committee was.

11 Q Small Business committee?

12 A I guess it was the SBA committee, Small
13 Business committee. I talked with a fellow named
14 Mark Stephens, who was an attorney for the SBA here
15 in Washington. Stephens, I believe, was the
16 individual who told me about the report, and he
17 offered to supply a copy to us, or maybe we asked him
18 for it. At any rate, he said yes, he would make a
19 copy available to us.

20 Q Were there exhibits with the report, I
21 mean, raw documents?

22 A I don't remember now -- there was a whole

1 boxful of documents. There were several boxes of
2 documents -- no, just one box of documents, but I'm
3 getting ahead of myself.

4 Allen Carver was aware that this report
5 existed. I was in Little Rock. I remember Allen
6 Carver clamoring that he wanted a copy of the report
7 right away. I believe Mark Stephens had made
8 arrangements or was in the process of making
9 arrangements to have the report sent to me or sent to
10 us in Little Rock.

11 I called Stephens back, and I said hey, can
12 you do me a favor? If it's convenient, can a
13 messenger take a copy of it over to Allen Carver over
14 in Washington? Fine.

15 I guess what happened, then, is Stephens
16 took the report over to Carver and hand-delivered
17 it. He had a conversation with Carver. In the
18 conversation he had with Carver, he told Carver that
19 he or I think maybe his boss at the SBA had been --
20 somebody at the SBA at least, had been contacted by a
21 member of the White House counsel's staff, and I
22 believe the name Eggleston was the person -- I can't

1 remember his first name, but there was a lawyer in
2 the White House counsel's office whose last name is
3 Eggleston, who was involved in the contact with the
4 SBA. And basically, Mr. Eggleston wanted a copy of
5 the SBA report, which was being furnished to the
6 Small Business committee of the House of
7 Representatives.

8 The report -- or a copy of the report was
9 transmitted or somehow furnished to the White House
10 counsel's office. I don't know the details of how
11 that took place. But at any rate, this is what Mark
12 Stephens related to Allen Carver. Allen Carver
13 became concerned about -- I guess Stephens, then,
14 asked Allen Carver, do you think we did the right
15 thing, or do you think we shouldn't have done it?

16 And I don't know if Carver ever directly
17 answered his question, but certainly very strongly
18 implied that they should not have done it and
19 requested that Stephens arrange to have the report
20 retrieved from the White House.

21 Q Again, do you know whether there were
22 exhibits with the report?

1 A I can't remember. I believe there were,
2 but I don't recall whether the exhibits were in a
3 binder or whether they were loose. At any rate, I
4 guess Stephens then contacted either Mr. Eggleston or
5 someone else in the White House counsel's office and
6 said well, that they wanted the report and whatever
7 other documents they turned over to be returned to
8 the SBA.

9 And I remember later talking with Mark
10 Stephens about this, and he told me whoever it was he
11 spoke with in the White House counsel's office
12 suggested that they would return it to him on a
13 street corner on a Sunday morning on or from their
14 way to church, and I remember Mark Stephens saying he
15 was somewhat appalled at the rather casual, almost
16 cavalier treatment of it. I don't remember whether
17 he actually picked them up on a street corner or not,
18 but he did get the documents back.

19 I interviewed Mark Stephens, a fellow named
20 Marty Techler, who I think was like the assistant
21 general counsel for the SBA and also a man named John
22 Spotilia, who was the newly or recently appointed

1 general counsel for the SBA. I interviewed them in a
2 conference room at the SBA with an FBI agent.

3 Q Who was the agent?

4 A Dana Gillis. The way that interview came
5 about was, I had already previously scheduled to meet
6 with Mark Stephens on that -- whatever the day was at
7 the time in order to spend some time -- not only was
8 I there, Dwight Bostwick and Jim Nixon were also
9 there. And as I recall, we had all -- all three of
10 us had made arrangements to stay in Washington,
11 probably on a Monday, stay in Washington that Monday
12 to meet with Mark Stephens because we considered it
13 important to the David Hale case.

14 And the reason we wanted to meet with
15 Stephens is basically to acquire the necessary
16 specific knowledge of SBA procedures and everything
17 we could learn about small business investment
18 companies, and Mark Stephens was very helpful and
19 very willing and very gracious in offering to sit
20 down and spend as much time as we needed so that he
21 could walk us through the procedural and legal steps
22 involved.

1 Allen Carver then instructed me to
2 interview Mark Stephens and other people at the SBA
3 regarding the furnishing of the report to the White
4 House counsel's office. And Allen Carver had made
5 arrangements with, I believe, the WMFO, the
6 Washington metropolitan field office of the FBI, to
7 have an agent present. I didn't know who the agent
8 was going to be. All I knew was there would be an
9 FBI agent there. When we went there, that's the
10 first time I met Dana Gillis.

11 We then conducted the interviews of Mark
12 Stephens, of Marty Techler and John Spotilia, and we
13 were basically told that yes, they had recovered the
14 documents which were furnished to the White House
15 counsel's folks -- to the White House counsel
16 people.

17 And I remember asking if they had
18 determined whether any documents were copied. I was
19 told, I believe, by Mark Stephens, in a conversation
20 he had with -- I want to say Neil Eggleston -- that's
21 his first name -- that he had been told that one or
22 two documents were copied, but then that the copies

40

1 were destroyed.

2 I don't know what documents were copied. I
3 don't believe Stephens knew what documents were
4 copied. I don't believe Eggleston told him what
5 documents were copied. I remember inquiring of
6 Stephens whether he had examined the report and
7 documents which were returned to him by the White
8 House counsel's office. He said he had. And in the
9 conference room against the wall was a box with the
10 documents in them as well as the report.

11 And I recall the agent and I required Mark
12 Stephens to go through every scrap of paper in the
13 box, satisfy himself in our presence that everything
14 was there. He did so and told us yes, everything was
15 there.

16 Q Is there anything else you can recall about
17 these interviews?

18 A Yes, sir. I remember questioning John
19 Spotilia as to how it came about that they were
20 contacted by the White House counsel's office. My
21 recollection is what he told me was that he himself
22 did not receive the phone call, that an employee of

1 the SBA who looks after public affairs, basically
2 their press person, was contacted, I think. I think
3 that the SBA's press officer had been contacted by
4 somebody at the White House press office, but I'm
5 not -- that's sort of the impression I have now, but
6 I'm not 100 percent sure of that, and I think that
7 the SBA press officer said oh, yes, you can have
8 anything you want.

9 Then it somehow wound up that that
10 determination had to -- or was reviewed by John
11 Spotilia, and I believe possibly also by Marty
12 Techler, who was like the number two person in their
13 general counsel's office at SBA. And they both said
14 yeah, no problem.

15 I'm trying to remember whether Spotilia ran
16 that past the commissioner or --

17 Q The administrator?

18 A The administrator. I don't remember
19 whether he did or not. I sort of have the impression
20 that he didn't, but I can't be certain on that.

21 Q Now, just to be clear, this report, the
22 underlying documents, the exhibits, were generated by

1 the inspector general of SBA in the course of the
2 inspector general's investigation of Capital
3 Management that later led to the criminal case; is
4 that correct?

5 A I believe that's right.

6 Q Did Agent Gillis prepare a telex or 302 of
7 his or her -- is it a man or a woman?

8 A It's a man.

9 Q -- of his interview or notes of the
10 interview?

11 A Yes, I've seen the 302.

12 Q It's a 302 or a telex?

13 A It's a 302.

14 Q Were you personally involved in interviews
15 of any individuals at the White House concerning this
16 episode?

17 A No.

18 Q Do you know who conducted interviews at the
19 White House concerning the episode?

20 A No.

21 Q Did you ever see any written reports of the
22 interviews?

1 MR. BEN-VENISTE: You assume that
2 interviews took place.

3 MR. CHERTOFF: There's some evidence in the
4 record that there were.

5 BY MR. CHERTOFF:

6 Q Just to change the format of the question,
7 did you see any reports of interviews, if any, of
8 individuals at the White House?

9 A Yes.

10 Q Do you remember who was interviewed?

11 A I believe --

12 Q Was Mr. Eggleston interviewed?

13 A I believe Mr. Eggleston was interviewed,
14 and for some reason, I believe that Mr. Kennedy was
15 also interviewed, and the difficulty I'm having is I
16 don't know why Mr. Kennedy would have been
17 interviewed regarding the SBA documents being sent to
18 the White House.

19 I believe Mr. Kennedy may have been
20 interviewed about the telephone discussion he had
21 with, I think, Randy Coleman earlier on, but I'm not
22 100 percent sure of that now. I'm sorry.

1 Q Do you know whether Mr. Nussbaum was
2 interviewed?

3 A My recollection was that a determination
4 had been made by the FBI not to interview
5 Mr. Nussbaum at that time.

6 Q Do you know who made that determination?

7 A No, I don't. The impression I have, it was
8 somebody at the FBI.

9 Q Did you know that Mr. Carver had requested
10 that Mr. Nussbaum be interviewed?

11 A Yes, I did.

12 Q Did you have any discussions with
13 Mr. Carver or anybody else concerning why
14 Mr. Nussbaum was not interviewed?

15 A The only thing I remember about that was
16 Mr. Carver basically complaining, I guess, to
17 Mr. McDowell that the Bureau was dragging its feet on
18 conducting all of the interviews, not just
19 Mr. Nussbaum, and I sort of have a faint recollection
20 of maybe later on, Mr. Carver complaining to
21 Mr. McDowell in my presence that the FBI was holding
22 back on the Nussbaum interview. That's about all I

1 can --

2 Q Do you know whether Mr. Lindsey was
3 interviewed?

4 A No, I don't.

5 Q Do you know whether Mr. Carver requested
6 that Mr. Lindsey be interviewed?

7 MR. BEN-VENISTE: Carver was deposed
8 yesterday. It seems to me --

9 MR. CHERTOFF: I'm asking the witness for
10 his --

11 MR. BEN-VENISTE: We are far afield of the
12 issues --

13 THE WITNESS: I don't recall. I just don't
14 know.

15 MR. BEN-VENISTE: -- involving the
16 referrals and the proprieties associated with the
17 referrals. We're now into Capital Management and
18 some tangent of Capital Management involving
19 Mr. Carver.

20 MR. CHERTOFF: I don't think it's a
21 tangent. But in any case, we have the witness's
22 answer.

1 BY MR. CHERTOFF:

2 Q Were you involved in discussions with
3 Mr. Kendall concerning obtaining documents belonging
4 to the President and First Lady as they related to
5 the matters that you were investigating?

6 A Yes.

7 MR. BEN-VENISTE: Off the record.
8 (Discussion off the record.)

9 BY MR. CHERTOFF:

10 Q Did you personally deal with Mr. Kendall or
11 did someone else deal with him from the Department of
12 Justice?

13 A I understand the question. It's difficult
14 to answer the question the way it's phrased. I had
15 telephone conversations with Mr. Kendall, but I am
16 not the only member of the Department of Justice who
17 spoke to Mr. Kendall.

18 Q What were your telephone conversations with
19 Mr. Kendall?

20 A Basically, about production of documents
21 pursuant to a grand jury subpoena which had been
22 issued to Mr. Kendall and to the law firm of

1 Williams & Connolly.

2 Q And what did he say and what did you say?

3 A Let me back up here, if I may. There was
4 more than one discussion between Mr. Kendall and me
5 and these were all telephone discussions. There were
6 at least two telephone discussions, and I want to say
7 probably more than two, three or four possibly. The
8 discussions focused on the scope of the subpoena, the
9 time and method of production of the documents
10 described in the subpoena, and the completeness of
11 any production to be made. I suppose, really, that
12 last part falls within the first part, being the
13 scope itself.

14 Q Turning to those topics, what was said
15 about them? What was the discussion?

16 A I may be overly cautious here. I want to
17 answer the question, and I will try to do it as best
18 as I can, but I may have to be somewhat generic, and
19 I say it for this reason. I'm a little concerned
20 about Rule 60 of the Federal Rules of Criminal
21 Procedure, and I get goosey when I get into these
22 type of situations.

1 MR. BEN-VENISTE: Let me interrupt for a
2 second, too, and inquire as to what relevance these
3 conversations have to the areas under investigation.

4 MR. CHERTOFF: Well, I don't really want to
5 get into the actual documents that were produced. I
6 was going to inquire about discussions concerning
7 whether things ought to be obtained by subpoena or
8 not.

9 Do you have an objection to the scope?

10 MR. BEN-VENISTE: I was just wondering
11 where this fits into our resolution.

12 MR. CHERTOFF: Well, I think it has to do
13 with the issue of the handling of the referrals,
14 since these are -- I guess I could lay the foundation
15 by saying the subpoena was issued pursuant to the
16 investigation.

17 MR. BEN-VENISTE: The suggestion being that
18 somehow it was improper to either issue a subpoena or
19 discuss the --

20 MR. CHERTOFF: Richard, I'm not making a
21 suggestion. I'm asking the question.

22 MR. BEN-VENISTE: I wonder what the

1 relevance is.

2 MR. CHERTOFF: The relevance is we're
3 exploring the handling of the investigation of the
4 referrals. I'm not saying that there's anything
5 untoward that happened. I'm just saying that since
6 we have Mr. Mackay here, and he was involved in this,
7 I would like to find out what conversations there
8 were about the nature in which the documents ought to
9 be obtained and how they were physically transferred.

10 MR. BEN-VENISTE: If that has nothing to do
11 with any improprieties or remotely connected with any
12 improprieties, unless you're suggesting a theory, I'd
13 like to know it. If you're suggesting that the
14 Department of Justice acted improperly in connection
15 with its investigation, then I suppose that would fit
16 within the scope of the resolution, and I'd like to
17 know that so we can be prepared in going forward with
18 our questioning to cover that area.

19 If there is no suggestion of impropriety,
20 then my concern is that in view of your memos to me
21 about the number of witnesses, particularly those who
22 have been deposed and how much time that's taking the

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1 committee, I just question whether we ought to get
2 off into these kinds of tangents.

3 MR. CHERTOFF: I'm not suggesting any
4 impropriety by anybody. A question has been raised,
5 or I've seen questions raised from time to time
6 concerning why it was that a subpoena was issued or
7 at whose insistence a decision was made to broaden
8 the subpoena.

9 And I'm not suggesting that there was
10 anything improper or improper about a subpoena being
11 brought. I'm simply trying to develop whether
12 there's a factual basis to raise the question,
13 whether someone suggested the subpoena be brought and
14 what the reason was.

15 MR. BEN-VENISTE: This would fit into the
16 question of whether there was some impropriety.

17 MR. CHERTOFF: Any time we look at any
18 issue with the referrals or the handling of the
19 investigation up to the point that Mr. Fiske was
20 appointed, that's the question. We don't begin by
21 saying there was an impropriety. We begin by looking
22 at the facts and getting the facts and maybe the

1 answer was all according to Hoyle and it's not
2 particularly interesting.

3 I'm puzzled because this came up in the
4 deposition yesterday and I didn't hear an objection
5 to it.

6 MR. BEN-VENISTE: Which deposition was it?

7 MR. CHERTOFF: Mr. Carver. So it didn't
8 seem to me there was an issue about it. I'm willing
9 to drop it, frankly. I don't have a strong feeling
10 about it.

11 BY MR. CHERTOFF:

12 Q There was one question I want to ask about
13 the manner in which the documents were physically
14 obtained.

15 (Pause.)

16 I just have a couple of questions relating
17 to the manner in which documents were received. Let
18 me show you, first of all, Exhibit DBM 128 for
19 identification, which is also, I think, marked with a
20 general production number 4339 for identification.

21 Is this a set of notes in your handwriting?

22 A That's my handwriting.

1 Q Can you read the date?

2 A Something 28/93. Just a second. It
3 doesn't show up on here, but I know what it is. It's
4 12/28/93.

5 Q To what does this set of notes refer?

6 A This refers -- well, I assume you're
7 getting to the notation "4:35," which would be the
8 time of day, 4:35 in the afternoon, "CF meeting call
9 from Kendall," David Kendall. "Intends to cover,
10 understands scope of subpoena" -- covers, okay. It's
11 been redacted here. "Can't produce this week. Has
12 to review all files, three miracle boxes, but will
13 turn over everything. Expects we'll be close to 1/18
14 return date, but will have better handle by early
15 next week."

16 Q Now, I'm going to show you 4340 for
17 identification and ask you, is that the second page
18 of that same set of notes, just for completeness?

19 A My guess is yes.

20 Q And is there a little numeral 2 at the top?

21 A Yes.

22 Q Could you read the remainder of that?

1 A It's either "requires" or "requests" -- I
2 think it's probably "requires," but I'm not sure --
3 subpoena because of fear of leaks. Represents
4 newspaper reporters. Wants to maintain contact."

5 Q The reference to -- this portion of the
6 notes you've read, is this your notation of a
7 telephone call with Mr. Kendall?

8 A Yes.

9 Q What is the reference to "three miracle
10 boxes"?

11 A If you'll notice, the word "miracle" is in
12 quotes, and the reason is that is his word. I've
13 never heard the expression before in describing a
14 box. He was trying to convey to me the size of the
15 box by calling it a miracle box. I still have no
16 idea what he was talking about.

17 Q Neither do I.

18 A That's what that means.

19 Q The last phrase on the second page, can you
20 read that again, "wants to maintain contact," what
21 did that refer to?

22 A He wanted to maintain contact between us

1 and him. This was the first conversation I had had
2 with David Kendall. I can tell you all about how it
3 came about, if you want.

4 Q I think Mr. Ben-Veniste has raised an
5 objection.

6 MR. BEN-VENISTE: I've raised an inquiry.

7 BY MR. CHERTOFF:

8 Q Did there come a time, during the period of
9 time you were still involved in supervising the case
10 before Mr. Fiske took over the case, that you
11 received word that, in fact, documents were either
12 going to be delivered or to be picked up?

13 A Yes.

14 Q And which was it, to be delivered or picked
15 up?

16 A What had happened was, there was a partial
17 production of the documents. And I think -- I was in
18 Little Rock at the time. The documents were to be
19 picked up at the offices of Williams & Connolly here
20 in Washington by some FBI agents and transported to
21 Little Rock.

22 Now, for some reason, I want to say that

1 there were five boxes of documents picked up, not
2 three, and they were actually flown to Little Rock on
3 an FBI airplane the same day they were picked up, and
4 it was on a Friday because I remember staying in
5 Little Rock that weekend going into the FBI offices
6 on Saturday and seeing the boxes.

7 Q Was there a point where you yourself made a
8 request to go over and be present when documents were
9 picked up from Williams & Connolly?

10 A Yes.

11 Q When was that?

12 A Well, what had happened was, the return
13 date on the grand jury subpoena was January the
14 18th. And one of the topics that I was discussing
15 with David Kendall from time to time in our telephone
16 conversations was whether or not we could have an
17 earlier production. We weren't entitled to it, and I
18 remember him telling me well, he didn't know. He
19 still had a review of the documents and copies and so
20 on and so on.

21 And some of our other discussions involved
22 his understanding as to the scope of the subpoena and

1 what documents would be covered, what documents would
2 be produced, what documents would be withheld.

3 Well, this came in -- this discussion about
4 the withholding of certain documents occurred in a
5 later conversation I had had. It did not occur in my
6 initial December 28th conversation with David
7 Kendall. It occurred in a later conversation,
8 probably in early January, probably right after the
9 New Year.

10 There was a great deal of confusion over
11 the scope or completeness of the production that was
12 going to be made. There were suggestions that we
13 issue an additional subpoena.

14 Q Whose suggestions?

15 A They were probably more than suggestions.
16 They were almost directives by Carver and I think
17 Jerry McDowell. And the only thing I remember
18 telling them is that it would be -- in my opinion, at
19 least, it would be premature to issue an additional
20 subpoena at that time because the return date for the
21 original subpoena hadn't yet occurred.

22 And my recommendation was let's wait and

1 see what we get. If after we get everything we have
2 reason to believe that documents were being withheld,
3 we will then issue an additional subpoena. But I
4 remember my thinking at the time was that if, in
5 fact, we were going to have to issue an additional
6 subpoena, I want it to be as fact specific as
7 possible. And my thinking was one of the ways to do
8 that, take what they give us, go through that and see
9 if we can determine if things are missing so we can
10 be more specific in issuing an additional subpoena.

11 Allen Carver, maybe either at that time or
12 shortly thereafter, said all right, Kendall's making
13 arrangements or has made arrangements for agents to
14 go over to his office like the 13th of January -- I
15 don't know what the date was now -- to pick up the
16 remaining documents. And Allen Carver said I want
17 you to go with him, and I want you to interview David
18 Kendall, and I want you to interview him with these
19 agents there specifically about the question of the
20 completeness of the production. The issues involved
21 very simply were claims of privilege as to some
22 documents.

1 There was, in my mind, some confusion, and
2 I think a great deal of misunderstanding as to
3 whether David Kendall was going to, in fact, assert a
4 privilege with respect to some of the documents. We
5 had a number of discussions about that. And at one
6 point I had the impression that he wasn't going to
7 assert a privilege, and another point I had the
8 impression that he might assert a privilege. At
9 another point, I had the impression that he reserved
10 the right to assert a privilege. It was very murky.

11 That's the purpose of my going there, was
12 to basically interview David Kendall concerning the
13 specificity and completeness of the production, and I
14 was instructed to do that with FBI agents present,
15 presumably so they could prepare 302s of that
16 interview, and furthermore, the agents themselves
17 would participate in conducting the interview with
18 David Kendall.

19 I was later informed by Allen Carver not to
20 go because by that time the determination had been
21 made to appoint a special counsel. I don't believe
22 that Robert Fiske had been identified yet. We were

1 still responsible for the investigation until such
2 time that an independent counsel came on board. I
3 don't believe Robert Fiske had yet been named, but
4 everybody -- I shouldn't say everybody, but I think
5 there was a common belief that is that the identity
6 and appointment of the independent counsel would be
7 imminent.

8 At any rate, that being the backdrop, I was
9 basically instructed by Mr. Carver not to go to the
10 production -- to David Kendall's office when the
11 documents were produced, and I should contact or
12 communicate this information to the agents.

13 And I remember Dana Gillis was one of the
14 agents who was scheduled to attend that session, and
15 I remember talking to Dana Gillis and saying I'm not
16 going, and furthermore, I've been instructed to tell
17 you that when you and the other agents go over there
18 to pick up the records, you're not to interview
19 Kendall. That was that.

20 Q And your understanding of the reason for
21 the change was because at that point, a decision had
22 been made to bring Mr. Fiske on and the view was he

1 ought to make decisions about that kind of thing?

2 A Exactly. That's the impression I had. In
3 other words, I don't think we knew Robert Fiske was
4 the person, but we knew that somebody was going to be
5 assuming that role, and the reasoning at the
6 department, at least by Carver and others, was let's
7 not muddy up the waters. It's going to be somebody
8 else's responsibility. Let's don't go -- let's not
9 go blundering in there and do anything.

10 MR. CHERTOFF: I'd like to get this marked
11 as Exhibit DBM 1, if I may.

12 (DBM Exhibit 1 identified.)

13 BY MR. CHERTOFF:

14 Q For the record, DBM 1 is a copy of the
15 House deposition in the matter of Madison Guaranty
16 Savings & Loan of Donald Bruce Mackay.

17 Mr. Mackay, have you had an opportunity
18 previously to see the transcript of your deposition
19 given to the House staff?

20 A I've seen a copy of this. And I also had
21 an opportunity to look through it. I have made
22 little pencil notations in portions of it where there

1 are misspellings of names, nothing of substance at
2 all.

3 Q There's no material mistake?

4 A No, there are no material misstatements.

5 MR. SGRO: Although at this point, if we
6 can reserve DBM 2 for the errata sheet.

7 MR. CHERTOFF: I was going to say if and
8 when you append an errata sheet, that we append it to
9 the record as Exhibit 2.

10 (DBM Exhibit 2 identified.)

11 MR. CHERTOFF: I have nothing further.

12 MR. BEN-VENISTE: Why don't we take a short
13 break, and we'll use the time until lunch.

14 (Recess.)

15 EXAMINATION

16 BY MR. BEN-VENISTE:

17 Q Mr. Mackay, I'd like to spend a little time
18 with respect to your background because I noticed in
19 the deposition taken by the majority staff on the
20 House side that there seemed to be some implication
21 that you were not an experienced prosecutor and you
22 didn't have the background sufficient to be given the

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1 responsibility of the Hale investigation. So I'd
2 like to go back over your background, if we might.

3 MR. CHERTOFF: Just for the record, I want
4 to -- I disagree with the characterization. I didn't
5 draw that implication from the House deposition, nor
6 is there any doubt in my mind that you're an
7 experienced prosecutor. I don't object to you asking
8 the questions.

9 I think, though, putting on the record
10 counsel's opinion about other proceedings is probably
11 not appropriate.

12 MR. BEN-VENISTE: I think those questions,
13 both of Mr. Mackay, but to a larger extent of others
14 at the Department of Justice, will speak for
15 themselves in that regard.

16 BY MR. BEN-VENISTE:

17 Q You indicated that you were a U.S. Attorney
18 in the Southern District of Illinois, and I'd like to
19 fill that out. For how long a period of time were
20 you U.S. Attorney?

21 A Almost six years.

22 Q And prior to that, you had had experience

1 in criminal law, had you not?

2 A Yes.

3 Q And could you kind of describe your
4 pre-U.S. Attorney history, which, as I understand it,
5 was from 1971 through 1977?

6 A Correct. In 1963, in the summer, upon
7 graduating law school and passing the Illinois Bar
8 examination, I took a job as an assistant state's
9 attorney of McLean County, Illinois. The county seat
10 is Bloomington. There I prosecuted misdemeanors. I
11 handled juvenile -- the juvenile court docket, and I
12 did some felony prosecution. I held that position
13 for approximately two years.

14 I then left the state's attorney's office
15 and went into private practice in Bloomington,
16 Illinois. In, I believe, December of 1964, I was
17 appointed as the public defender of McLean County,
18 Illinois. At that time it was a part-time position.
19 I was therefore able to maintain a part-time private
20 practice.

21 Q And without going into great detail, is it
22 fair to say that you handled a number of criminal

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1 cases as principal trial lawyer?

2 A Yes.

3 Q And thereafter, did you go right to the
4 U.S. Attorney's office?

5 A Yes.

6 Q And who appointed you as U.S. Attorney?

7 A President Richard Nixon.

8 Q And you served through Richard Nixon's
9 administration and into the Ford administration; is
10 that correct?

11 A Yes.

12 Q And you resigned, more or less coincident,
13 with the end of the Ford administration?

14 A Correct.

15 Q And as United States Attorney, how many
16 lawyers did you supervise?

17 A Four.

18 Q Were you involved hands-on in a wide
19 variety of federal criminal prosecutions --

20 A Yes.

21 Q -- over that six-year period?

22 A Yes.

1 Q And did you have contact with the
2 Department of Justice, and were you familiar with the
3 workings of the Department of Justice as they related
4 to United States Attorneys in the field?

5 A Yes.

6 Q And you indicated that you have been with
7 the fraud section of the Department of Justice for
8 approximately four years now.

9 A Yes.

10 Q What were the circumstances under which you
11 joined the fraud section?

12 A I wanted to basically return to trial work
13 as a criminal prosecutor.

14 Q And who hired you?

15 A Well, at the time that I went to work in
16 the fraud section, the chief of the fraud section was
17 Larry Urgenson. I believe he was the individual who
18 had the authority to hire me and did so.

19 Q And did you interview with others in the
20 fraud section?

21 A Yes. I interviewed with Donald Foster who
22 was the deputy chief of the fraud section in charge

1 of administrations. I also interviewed with John
2 Arterberry, who was the deputy chief for financial
3 institution and securities fraud, and I also
4 interviewed with Allen Carver, who was the principal
5 deputy chief of the fraud section.

6 Q And is it fair to say that subsequent to
7 the time that you were hired and for the two years or
8 so prior to the time that you were assigned to the
9 Arkansas matter about which you've given testimony,
10 that you worked closely with Mr. Arterberry and
11 Mr. Carver?

12 A Primarily with Mr. Arterberry and not so
13 much with Mr. Carver.

14 Q But it was -- strike that.

15 You mentioned that prior to actually being
16 assigned the case, you were given a heads-up that
17 there might be a recusal, either partial or complete,
18 and that might result in the Department of Justice
19 taking over an investigation; is that correct?

20 A Yes.

21 Q Now, were you told in substance about the
22 time you were advised of the possibility of the

1 recusal that there had been another earlier case
2 involving Madison Bank that the prior U.S. Attorney
3 thought was a BS case?

4 A Yes.

5 Q Was that the term that was used?

6 A No, that was not the term that was used by
7 Mr. Carver. That is my own shorthand.

8 Q And do you recall what Mr. Carver told you
9 about the circumstances of the prior consideration of
10 the Madison case?

11 A Essentially, that the United States
12 Attorney's office in Little Rock, as well as the FBI
13 in Little Rock, had received a referral from the RTC
14 involving Madison Guaranty, and essentially didn't
15 feel that the case had prosecutive merit.

16 Q Was there anything else that was mentioned
17 at that time in terms of the person who was
18 responsible for referring the case from the RTC?

19 A No.

20 Q Now, at about the time that you were first
21 made aware of this situation involving a possible
22 Arkansas recusal, were you also advised that

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1 information had been received from a New York Times
2 reporter in some context?

3 A Yes.

4 Q And at that time, did you understand that
5 there were two sources of information being conveyed
6 to the Justice Department, one from a New York Times
7 reporter, and another from an individual at the
8 Justice Department named Irv Nathan?

9 A Yes.

10 Q And could you tell us how you learned and
11 what you learned about that?

12 A Well, what that involved was Allen Carver
13 communicating to me that there were two sources of
14 information regarding assertions by David Hale that
15 the President was involved in some questionable
16 transactions concerning loans to the Whitewater
17 Development Corporation.

18 I was told that a reporter for The New York
19 Times was one of the sources of the information, and
20 the impression I got was either David Hale or David
21 Hale's lawyer were communicating with the reporter
22 from The New York Times. I was also told that there

1 was yet another source who was providing essentially
2 the same information to Irv Nathan and that we didn't
3 know the identity of that other source. I later
4 learned, not at that meeting, but sometime
5 thereafter, that Irv Nathan's source was, in fact,
6 the New York reporter.

7 Q And would that be Jeff Gerth?

8 A Gerth or Garth, yes.

9 Q Did you ever talk to Mr. Nathan about this?

10 A No.

11 Q What did you understand that the reporter
12 had told Mr. Nathan?

13 A My understanding was that the reporter had
14 told Mr. Nathan that David Hale had told the reporter
15 that President Clinton was involved in putting
16 pressure on David Hale to persuade David Hale to
17 loan, I believe, \$300,000 from his small business
18 investment company to the Whitewater Development
19 Company; that James McDougal, who was at the time the
20 president or CEO of Madison Guaranty, was also
21 involved somehow in this transaction. It wasn't very
22 clear to me just how this all supposedly took place.

1 I remember being told that there were allegations,
2 that there was a meeting.

3 Q Was this all from the same initial
4 conversation?

5 A Yes. There were allegations made,
6 presumably by David Hale that there was a meeting at
7 James McDougal's office, and that the participants in
8 the meeting were James McDougal, President Clinton
9 and David Hale. And for some reason, I also remember
10 being told that David Hale claimed that he, David
11 Hale, was driven to the meeting in a sheriff's squad
12 car.

13 It was further related that at the meeting,
14 Mr. Clinton told David Hale that he, David Hale,
15 needed to loan 300 -- through his small business
16 investment company, that David Hale was expected to
17 pump \$300,000 into the Whitewater Development
18 Corporation. And I was also told that Mr. Clinton
19 and Mr. McDougal were partners in the Whitewater
20 Development Corporation, the suggestion being that
21 they both personally benefited from the infusion --
22 from an infusion of \$300,000 into Whitewater.

1 Q Was there any elaboration of what kind of
2 pressure or what was said to pressure Hale?

3 A Not really any elaboration on that. I
4 think the approach -- keep in mind, this is the third
5 and fourth hand hearsay.

6 Q This is coming to you from Mr. Carver --

7 A Right.

8 Q -- via Mr. Nathan --

9 A Right.

10 Q -- from this newspaper reporter who claimed
11 to have spoken directly with Mr. Hale?

12 A Yeah, either Hale or possibly Hale's
13 lawyer. I'm a little fuzzy on that. The impression
14 I had was that if there was any -- the pressure was
15 very subtle, if there was pressure. There were no
16 threats. It was more or less presented as something
17 which was necessary to bail out Whitewater
18 development financially and that Hale was being asked
19 to do this for the good of the cause.

20 Q Did Mr. Carver indicate to you how long
21 this conversation lasted between Mr. Nathan and the
22 newspaper reporter as yet unidentified?

1 A I think at that time I had been told the
2 name of the reporter. I just didn't remember it
3 until you mentioned it. No, Mr. Carver did not
4 elaborate at all on any of the discussions between
5 Irv Nathan and Jeff Gerth.

6 Q Did you and Mr. Carver discuss whether
7 Mr. Hale or his attorney had made a proffer along the
8 lines of the information you had learned the reporter
9 was telling Mr. Nathan up to that point?

10 A I can't be sure of this. All I know is
11 that I did acquire information at some point in time
12 very early on that Randy Coleman, Mr. Hale's lawyer,
13 had expressed an interest in making a proffer to the
14 United States Attorney in the Eastern District of
15 Arkansas. I can't say for certain that I was told
16 that by Mr. Carver at this early meeting. It's
17 entirely possible. I just really don't -- I know I
18 learned it, but I can't tell you when.

19 MR. BEN-VENISTE: We'll try to refresh your
20 recollection when we resume after the luncheon
21 break.

22 (Whereupon, at 12:30 p.m., the deposition

1 was recessed, to be reconvened at 1:30 p.m. this same
2 day.)
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1 AFTERNOON SESSION (1:59 p.m.)

2 Whereupon,

3 DONALD B. MACKAY

4 resumed the stand and, having been previously duly
5 sworn, was examined and testified further as follows:

6 EXAMINATION (Continued)

7 BY MR. BEN-VENISTE:

8 Q Where we left off, we were talking about
9 the approach that had been made to Mr. Nathan by
10 Mr. Gerth from The New York Times. It wasn't
11 suggested, was it, that Mr. Nathan was providing any
12 information to The New York Times, was it?

13 A No.

14 Q Did you determine, then -- strike that.

15 It's somewhat unusual, is it not, for the
16 newspaper to become a source which a prosecutor keeps
17 as a confidential source. Isn't that so?

18 A It's difficult for me to characterize
19 anything as unusual.

20 Q Had you ever told anyone at the Department
21 of Justice that you had received information from a
22 confidential source when it was a newspaper report?

1 A No.

2 Q Is it the case that Mr. Nathan did not
3 reveal who his source was for some time?

4 A I don't know.

5 Q Did you determine what the purpose was, as
6 far as Mr. Nathan or Mr. Carver could puzzle out, as
7 to why a reporter for The New York Times was
8 transmitting this kind of information to the
9 Department of Justice?

10 A No, there was never really any discussion.

11 Q Did you ever discuss with colleagues at the
12 Justice Department or indeed with Mr. Coleman how it
13 came to be that instead of making a proffer to the
14 Department of Justice directly or to the FBI
15 directly, he chose to make this information known to
16 a reporter for The New York Times?

17 A My understanding is, and once again, I
18 can't say that this was information which was
19 conveyed to me at that first meeting with Allen
20 Carver, but my general understanding of the entire
21 situation is that Mr. Coleman attempted to negotiate
22 a proffer with the United States Attorney's office in

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1 the Eastern District of Arkansas and was unsuccessful
2 in obtaining the terms that he wanted.

3 Q So that you then concluded that this was a
4 part of a negotiating strategy by Mr. Coleman to
5 force the prosecutor's hand?

6 A Yes.

7 Q And when you talk about what his strategy
8 was previously in terms of negotiating a proffer, is
9 it correct that Mr. Coleman's position, as you were
10 advised, with the Arkansas U.S. Attorney's office,
11 was that he was not going to provide any information
12 or information unless it was under terms where he
13 would either get immunity or a misdemeanor?

14 A That's correct.

15 Q And when you came into the case, it was
16 necessary that you first obtain as much information
17 as possible about the facts underlying the violation
18 or the alleged violation; correct?

19 A Yes.

20 Q And at the time you formally came into the
21 picture, an indictment had returned already?

22 A As to David Hale, yes.

1 Q Right now --

2 A We're talking about the Hale case, I
3 assume.

4 Q Right. In evaluating whether to enter into
5 a plea agreement, what is the normal process that one
6 goes through as a prosecutor?

7 A Well, first evaluating the strength of your
8 own case in terms of the applicable law, the facts,
9 the availability and credibility of witnesses,
10 determining if there are inconsistencies between what
11 witnesses say, determining the extent to which a
12 witness may be corroborated by, say, documentary
13 evidence or other witnesses.

14 Q And it would stand to reason that the
15 stronger the case, as you evaluate it, the less
16 inclined one would be willing to make concessions
17 regarding the eventual penalty that the defendant
18 would face?

19 A I think that's a fair statement, yes.

20 Q And on the basis of your evaluation of the
21 strength of the case, did you have any question but
22 that this was a strong case against Mr. Hale?

1 A If you could accept at face value all of
2 the allegations contained in the indictments, your
3 inclination would be to conclude that it is a strong
4 prosecutable case.

5 Q And were you in a position to make that
6 kind of evaluation by the time that you were
7 negotiating with Mr. Coleman over a possible
8 disposition of the case?

9 A Yes.

10 Q And did you have some -- let me put it a
11 different way.

12 Did Mr. Coleman argue to you to receive
13 consideration on behalf of Hale in this negotiating
14 process on the basis of the fact that he didn't
15 believe it was a strong case against his client?

16 A No, Mr. Hale never discussed the merits of
17 the case.

18 Q Mr. Coleman.

19 A Mr. Coleman, I'm sorry. Mr. Coleman never
20 discussed the merits of the case.

21 Q I take it it led you to conclude that from
22 the standpoint from the first leg of this stool in

1 evaluating what kind of plea agreement if any to
2 enter into, the strength of your case was not an
3 issue?

4 A That's incorrect. There were multiple
5 problems with the indictment. There were multiple
6 problems with the case, with the way it was indicted,
7 with the quantum of proof that was available, with
8 the form of evidence available and quite frankly,
9 with the thoroughness of the investigation that the
10 FBI did pre-indictment. The indictment itself was
11 fatally defective on its face of one count because it
12 was time-barred.

13 The indictment charged multiple
14 conspiracies. I was persuaded, after reviewing all
15 of the facts and the documents, as well as the
16 applicable law -- I was persuaded as a matter of law
17 that we were dealing with a single conspiracy and not
18 multiple conspiracies.

19 Q In terms of the strength of the single
20 conspiracy case, did you have some question about
21 whether you would be able to make such a case?

22 A The problems arose with respect to making

1 or establishing necessary links in a chain of
2 events. In order to establish these links,
3 considering the then-present state of the
4 investigation, we were required to make assumptions,
5 and I don't like to make assumptions, particularly as
6 a prosecutor, and it's not appropriate.

7 I mean, I have to say that in general, the
8 case was not thoroughly investigated by the FBI. In
9 my opinion, the case should not have been indicted
10 when it was.

11 Q You mentioned that one of the charges was
12 time-barred.

13 A Right.

14 Q When did the statute run?

15 A I don't remember any of that now. I
16 remember looking at one of the counts in the
17 indictment and looking at a date in that count and
18 saying if that is the correct date, the statute has
19 already expired, so I made --

20 Q There was some time pressure associated
21 with bringing this indictment?

22 A No.

1 Q There wasn't?

2 A The date mentioned in that particular count
3 of the indictment had been time-barred for several
4 months before the indictment was brought. It was
5 just a wrong date.

6 Q This was not the subject of discussion with
7 Coleman?

8 A No.

9 Q What are the other things that you
10 evaluated besides the strength of the case?

11 A What I call jury nullification, and that is
12 the nature of the offense itself. Is it something
13 that would appear to a jury to be super technical?
14 Are we dealing with a fact situation where there is
15 no identifiable victim? Are we dealing with a fact
16 situation where, even if there is an identifiable
17 victim, there is no economic loss sustained by the
18 victim?

19 Q And on this issue, were there questions
20 about possible jury nullification?

21 A No.

22 Q So this was not a factor?

1 A No, that was not a factor.

2 Q What other factors would you use?

3 A Whether or not a defendant would be able to
4 successfully mount a defense that he or she lacked
5 the requisite criminal intent.

6 Q It's sort of a subpart of the strength of
7 the case, but if you would treat it as a separate
8 issue, how would you come out on that -- or how did
9 you come out on that?

10 A I would say with respect to the specific
11 intent element, once again, we came out -- I
12 shouldn't say once again -- our evaluation was that
13 David Hale would have a difficult time in negating
14 intent.

15 Might I mention something here by way of
16 explanation or clarification?

17 Q Sure.

18 A There were two other individuals named in
19 the indictment as codefendants. The strength of the
20 case as to each of these codefendants was not
21 necessarily the same as it was with respect to David
22 Hale.

1 Q Let's focus on this. He was the only one,
2 to your knowledge -- perhaps you can correct me if
3 I'm operating under a misperception -- that had
4 information relating to President Clinton?

5 A That's correct. What part of my thought
6 process was, that if there are weak defendants in the
7 case, the overall effect can be to drag down the
8 strong case. I mean, that was one of our
9 considerations. It was not an overwhelming
10 consideration, but by the same token, it was a matter
11 that gave us some concern.

12 Q Was there anything else that went into the
13 mix?

14 A Well, certainly -- to make specific
15 reference to this situation, rather than talking in
16 the abstract. When a prosecutor is faced with a
17 situation where a defendant represents through
18 counsel that he or she has information concerning
19 wrongdoing by other people, and that that defendant
20 is willing to furnish that information and be
21 cooperative with the government in an investigation
22 into the conduct of others and possibly prosecution

1 of others, that is, in my view, an appropriate
2 consideration in the overall determination as to
3 whether or not a plea arrangement should be entered
4 into and under what terms.

5 Q Now, to come back to the history of plea
6 negotiations that preceded your act of involvement in
7 the case, were you furnished with correspondence
8 between the U.S. Attorney's office and Mr. Coleman on
9 behalf of Mr. Hale that preceded your involvement in
10 the case?

11 A Yes.

12 Q Did you learn at some point that either
13 Mr. Jackson or Ms. Casey or someone else in her
14 office had suggested to Mr. Coleman that he ought to
15 make a proffer to an FBI agent with respect to any
16 information that Mr. Hale was prepared to give as
17 part of a plea negotiation?

18 A Yes.

19 MR. GICALE: I'm sorry?

20 THE WITNESS: Yes.

21 BY MR. BEN-VENISTE:

22 Q And what did you understand Mr. Coleman --

1 was that before or after The New York Times incident?

2 MR. GICALE: Which New York Times reference
3 are we talking about? Richard, I'm sorry.

4 MR. BEN-VENISTE: "The New York Times
5 incident" means the contact by Mr. Gerth.

6 THE WITNESS: I don't know how to answer
7 the question, and the reason is, I don't know when
8 Mr. Hale or Mr. Coleman spoke with Mr. Gerth, nor do
9 I have any independent recollection as to the date or
10 dates upon which Mr. Coleman communicated with the
11 United States Attorney's office in Little Rock
12 regarding proffers.

13 I do know that there was more than one
14 contact between Mr. Coleman and the United States
15 Attorney's office in Little Rock regarding a
16 disposition of the Hale case and regarding the
17 suggestion that Mr. Hale would furnish information
18 concerning President Clinton. But I don't know, and
19 I have no independent recall of the dates of those
20 contacts.

21 BY MR. BEN-VENISTE:

22 Q Let me show you what has been Bates stamped

1 DPB 47, which is a letter from Paula Casey to Randy
2 Coleman and see whether that might refresh your
3 recollection.

4 A Yes.

5 Q And how does that refresh your
6 recollection?

7 A Well, this letter is dated September the
8 16th of 1993. My recollection is my meeting with
9 Allen Carver, when he told me about The New York
10 Times, was about the same time, maybe a week or so
11 earlier than this. I can't be more specific than
12 that. So I would have to say I'm still unable to
13 tell you whether the September 16, 1993 letter
14 preceded Coleman's or Hale's contact with Gerth. I
15 just don't know.

16 Q Does it indicate in that letter that there
17 has been a request by the U.S. Attorney's office to
18 have Mr. Coleman have his client make a proffer to
19 the FBI?

20 A Right.

21 Q And it's reflected that Mr. Coleman has
22 declined to do that?

1 A Yes.

2 Q Do you recall that it was Mr. Coleman's
3 view that he wished the U.S. Attorney's office to
4 advise him that if he were to make a proffer, that
5 the U.S. Attorney's office consider a grant of
6 immunity?

7 A That's right.

8 Q And in your view, is there any circumstance
9 under which a grant of immunity would be provided
10 against a person for whom a case had been assembled
11 without that person providing a proffer?

12 A No.

13 Q And so was it your view that at that point,
14 the U.S. Attorney's office and Mr. Coleman, on behalf
15 of Mr. Hale, were at an impasse?

16 A Yes.

17 Q And when you came into the picture after
18 familiarizing yourself with the facts, you've
19 indicated that you had conversations, some face to
20 face and some by telephone, on the subject of an
21 appropriate plea agreement with Mr. Coleman.

22 A Let me clarify that. The focus of the

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1 discussions that I had with Mr. Coleman was on a
2 proffer and not specifically a plea agreement,
3 although I will say that ordinarily, a proffer would
4 be taken in the context of a plea agreement. But we
5 hadn't reached the point where we were talking about
6 structuring the language of a plea agreement. We
7 were limiting our discussions to the terms and
8 conditions of a proffer.

9 Q Let me go back to around the time that you
10 were formally assigned to the case and ask whether at
11 some point you asked Paula Casey to summarize the
12 state of plea negotiations that her office had had
13 with Mr. Coleman.

14 A Yes.

15 Q And let me show you what has been Bates
16 stamped as TEAM 642.

17 MR. SGRO: It will be easier for the
18 purposes of the record to use the Bates stamp numbers
19 at the bottom of the page, which you have that begin
20 with zero and move forward.

21 BY MR. BEN-VENISTE:

22 Q All right, I'll do that for the Justice

1 Department Bates stamp, 016574, which is a
2 November 9, 1993 memo to you from Paula Casey.

3 What did you understand the status of the
4 negotiations to be at that point?

5 A Well, this is a memorandum which I had
6 asked Paula Casey to prepare and submit to me. In
7 the memorandum, she indicates that on November the
8 8th of 1993, after having received a letter from
9 Mr. Coleman, that she had been telephonically
10 contacted by Coleman and told, one, that Hale was
11 willing to plead to a two-year substantive felony;
12 two, that the government would make a motion for a --
13 or a 5K1 motion; three, that the government would not
14 file any further charges against Hale, including tax
15 charges; four, that the government would make a
16 recommendation on sentencing; five, that Hale would
17 not be restricted in participating in Congressional
18 inquiries; and six, that Steve Irons, who was a
19 supervisory special agent in Little Rock, would be
20 involved in further investigations and prosecutions
21 by the government.

22 Q And she included in that memo a letter that

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1 she had received from Mr. Coleman dated November 8,
2 1993 --

3 A Right.

4 Q -- which has been marked 016474; is that
5 correct, sir?

6 A Yes, sir.

7 Q In terms of the proposal that Mr. Coleman
8 was making as of that point, can you compare that
9 with the status of your negotiations at the time that
10 you were relieved of responsibility for the Hale
11 matter?

12 A We were at that time still talking with
13 Mr. Coleman about the terms of a proffer by his
14 client.

15 Q So two months had gone by?

16 A Whatever.

17 Q Roughly speaking?

18 A That's approximately right.

19 Q And what terms were you asking for at that
20 point, and what was Mr. Coleman asking for?

21 A Mr. Coleman was still asking for advanced
22 assurance from the government that we would either

1 immunize his client or put a cap on a sentencing
2 recommendation. And my recollection is, that what
3 Mr. Coleman was pushing for is that we give his
4 client complete immunity and drop the case against
5 him, in effect.

6 Q In return for --

7 A In return for him coming in and telling us
8 everything he knew.

9 Q And that was without even making the
10 proffer -- that is in return for agreeing to make a
11 proffer, he wanted the government to agree that
12 Mr. Hale be immunized from prosecution. You mean use
13 immunity or you mean transactional immunity?

14 A There is no transactional immunity in the
15 federal system anymore. It was repealed 20 years ago
16 or more.

17 Q I'd have to direct you to the agreement
18 that was made with Mr. Hale to see how --

19 A I have not seen that agreement. All I know
20 is that the only --

21 Q -- how that repeal works in that case. But
22 he was asking for -- are you saying he was asking for

1 immunity and it was understood it was use immunity
2 and he still could be prosecuted?

3 A No, I'm not saying that at all.
4 Mr. Coleman -- let me rephrase that. We had
5 essentially conveyed to Mr. Coleman that we were not
6 going to buy a pig and a poke.

7 Q Maybe you could explain to me what a poke
8 is because I've never, in all the years I've been
9 using that expression, known what a poke is.

10 A I don't either.

11 Q So it's not a Midwest term. We have to go
12 down to someone from the South. I'm sure we're going
13 to find it.

14 MR. GICALE: Off the record.

15 (Discussion off the record.)

16 BY MR. BEN-VENISTE:

17 Q When we went off the record, you weren't
18 going to buy a pig and a poke.

19 A The situation was this. You have Randy
20 Coleman and his client, David Hale, and Randy Coleman
21 saying to us look, my client has all sorts of great
22 information that he can give you, but we want

1 something in return. And we want -- whatever it is
2 we want in return, we want the commitment from you
3 before we tell you what it is we know.

4 Our position was essentially we're not
5 interested in that kind of an arrangement.
6 Obviously, if we had our way, your client would come
7 in and tell us everything we know and we'd decide if
8 we want to do a deal. That's not fair to him.

9 That's why we have proffers. It allows a
10 witness or defendant to come in and tell the
11 government in a proffer session what it is that he
12 knows, the agreement being that the government will
13 not use anything that person says in the proffer
14 session against that person, other than for perjury
15 or lying.

16 And we were simply trying to suggest to
17 Mr. Coleman that the only way we would be able to
18 reach an accommodation with him is if he produces his
19 client for a proffer where we're permitted to make
20 inquiries of that. In our written proffer
21 presentation to Mr. Coleman, we also included what we
22 call a derivative use provision, meaning that the

1 government would be free to use any information it
2 derived from his client in a prosecution of his
3 client.

4 Q Is that the standard proffer agreement?

5 A Yes, that's the standard proffer agreement,
6 and it's also fairly common for defense counsel to
7 express the fact that they feel uncomfortable with
8 the derivative use language. The reason we put
9 derivative use language in our proffer is to avoid
10 casting our problems later on if the thing doesn't
11 work out.

12 Q That would mean to put the added burden on
13 the government to prove that nothing that had found
14 its way into the prosecution of the defendant had
15 been derived from information provided under this
16 proffer?

17 A Right. We would have to show independent
18 source. In order to avoid those type situations,
19 it's customary for the government to include a
20 derivative use provision in the proffer letter, and
21 that's what we did. And needless to say, that was a
22 bit of a sticking point with Mr. Coleman as it is

1 with most defense counsel.

2 Mr. Coleman -- well, there's one other
3 substantial change that we made which was not
4 contained in Paula Casey's or in the U.S. Attorney's
5 approach to this entire proffer situation, and that
6 is simply this: When the U.S. Attorney's office was
7 dealing with Mr. Coleman and attempting to negotiate
8 the terms of a proffer, the government held firm to
9 its insistence that Mr. Hale plead guilty to a
10 felony, regardless of anything else.

11 It made no difference what information he
12 furnished. It made no difference as to whether it
13 was valuable information or totally useless
14 information. Indeed, the government insisted on a
15 plea to a felony. We took the position with
16 Mr. Coleman that we were not insisting on any
17 preconditions.

18 In other words, your client has the key to
19 his own freedom in his own mouth perhaps. We're not
20 going to sit here and tell you in advance,
21 Mr. Coleman, that we will insist upon a conviction
22 and a plea to a felony as a precondition to a proffer

1 agreement. By the same token, we're not going to
2 tell you or represent to you or your client that
3 we're going to give you the case.

4 Q Did you put that in writing to Mr. Coleman?

5 A Yes. That is in our proffer letter, not in
6 those words, but the proffer letter that we sent to
7 Mr. Coleman makes it clear that it's an open book.

8 Q And approximately when did you send that
9 letter to him?

10 A Mid-November, late November. It was fairly
11 early on.

12 Q And what was Mr. Coleman's response?

13 A Let me think about it. He didn't respond
14 negatively. He didn't jump out of his skin, on the
15 other hand. He did tell me that he was interested in
16 getting together with us and discussing it and
17 pursuing it. He, in general, sounded very positive,
18 very upbeat. He sounded as if somehow we were going
19 to get a proffer, and it was a question of when.

20 Q Then what happened?

21 A Nothing happened. There was no contact.
22 We called Mr. Coleman. He wouldn't return our

1 calls. He was busy. He was out of town. We were
2 busy getting ready for the Hale trial. We were busy
3 doing a lot of other things, fighting with the RTC,
4 subpoenaing a lot of documents, and every now and
5 then I would call Coleman, what's going on.

6 We were very anxious, needless to say, to
7 talk to his client because at the time that this was
8 all happening, if you'll recall, somebody was making
9 representations to the news media -- I don't know
10 who, but I have my beliefs -- saying that David Hale
11 has got all this wonderful information, and the
12 government doesn't want to talk to him.

13 Q Didn't you believe, as apparently Ms. Casey
14 did, the approach to the news media was part of the
15 campaign that Mr. Hale was waging through his lawyer
16 to gain some advantage in the negotiating process?

17 A Sure, but it made no difference to me.
18 Whatever pressures they want to bring, they bring.
19 That doesn't change the fact that we still wanted to
20 talk to David Hale to see what he had to say.

21 Q And you would evaluate the quality of the
22 information that he was proposing. And on the basis

1 of that evaluation and taking into consideration the
2 nature of the offense about which you had proof and
3 were prepared to prosecute him, decide on what
4 concession, if any, to give Mr. Hale?

5 A Yes, absolutely.

6 Q And so it is the case, then, if I
7 understand your testimony, that despite the fact that
8 you pressed Mr. Coleman for an answer and while these
9 newspaper stories were coming out, your efforts to
10 receive a proffer from Mr. Hale were overtaken by the
11 fact that a special counsel was appointed to take
12 over responsibility?

13 A Well, the timing was such that that's the
14 way it worked out.

15 Q If I understand your testimony correctly,
16 you provided Mr. Coleman and Mr. Hale with ample
17 opportunity to come forward to accept your offer not
18 to prejudge what you were going to do with the
19 information supplied in a proffer, vis-a-vis charging
20 Mr. Hale, but that he did not do so?

21 A That's correct, and I will add this for
22 whatever it's worth.

1 One of the last discussions I had with
2 Mr. Coleman about this entire subject, he asked me --

3 MR. BEN-VENISTE: Off the record.

4 (Discussion off the record.)

5 MR. BEN-VENISTE: Where were we?

6 (The reporter read the record as requested.)

7 THE WITNESS: Mr. Coleman asked me -- I'm
8 trying to remember exactly how he phrased this -- oh,
9 I know -- if I would have the final say so in any
10 recommendation as to what the disposition of the case
11 against his client would be, assuming that he gave us
12 a proffer, and we were satisfied with it, and I told
13 him I didn't know the answer to that. And one of the
14 reasons I told him that was at that time there were
15 already very strong suggestions that a special
16 prosecutor should be appointed, and I said look, I
17 cannot and will not tell you something over which I
18 don't know I will have control later.

19 BY MR. BEN-VENISTE:

20 Q Even so, at that point, wasn't it the case
21 that you were in frequent contact about this case
22 with Mr. Carver and others at the Justice

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1 Department --

2 A Yes, but the way --

3 Q -- career Department of Justice personnel
4 at a supervisory level above yours?

5 A But the way I read his inquiry was directed
6 more at you might not be around to make a
7 recommendation at all. Nobody in the Department of
8 Justice might have anything to do with that. That, I
9 think, was part of it.

10 And I think it's also a fair reading, the
11 consideration you just noted, and that is that I
12 suppose there was always the possibility that
13 someone, either John Arterberry or Allen Carver or
14 Jerry McDowell, would disagree with the
15 recommendation that I would make. So I had to tell
16 Mr. Coleman, in all fairness, no, I cannot assure you
17 that I will have the final say on that.

18 Q Is it not clear that you conveyed to
19 Mr. Coleman that under any circumstances, even though
20 the Justice Department was prepared to keep an open
21 mind about what recommendation would be made in terms
22 of a plea agreement based on a proffer, that is,

1 whether Mr. Hale would have to plead to a felony, a
2 misdemeanor or might get a total pass, but the
3 information that he would provide would be
4 scrutinized very carefully for its merit?

5 A Yes, and I think I probably also explained
6 to him that one of the factors that we would take
7 into consideration and rely on in our determination
8 was the extent to which information supplied by
9 Mr. Coleman could be independently corroborated.

10 Q Now, it has been your experience over the
11 years, has it not, that individuals who have been
12 caught, as it were, having committed serious
13 violations of the law will go to substantial ends,
14 given their criminal proclivities in the first place,
15 to try to extricate themselves from the hot water
16 they're in?

17 A Yes.

18 Q It's not something unusual for a prosecutor
19 to find that an individual will lie or embellish the
20 truth so as to save his own skin?

21 A That is correct.

22 Q And that is why it is necessary for trained

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1 people to scrutinize the statements made by such
2 putative defendants to determine whether what they
3 have to say has any merit at all?

4 A That's right.

5 MR. GICALE: Is that a question?

6 MR. BEN-VENISTE: It's a question to which
7 the answers "that's right" has been noted.

8 BY MR. BEN-VENISTE:

9 Q Now, in addition to what you described this
10 morning as the last ditch effort to try to improve
11 his hand by attacking Paula Casey personally and the
12 attempt to improve his negotiating position by
13 providing an interview with The New York Times, was
14 it the case that you were aware of Mr. Hale or his
15 counsel, Mr. Coleman, contacting any member of
16 Congress?

17 A Yes. I believe that in the discussions I
18 had with Mr. Coleman, he indicated that his client
19 would like to reserve the right to do that, and I
20 said it's something over which I have no control.

21 Q I'm talking about whether Mr. Hale or his
22 lawyer had had any communications with Congress or

1 any member of Congress at or before the time that you
2 got involved in the case?

3 A That I'm not really sure of, but I kind of
4 remember Mr. Coleman telling me that he and possibly
5 his client had met with a member of Congress and
6 talked to them. It's sort of fuzzy in my mind, but I
7 do recall a discussion with Mr. Coleman about that,
8 and I also recall Mr. Coleman telling me that he had
9 an appointment scheduled with either a member of
10 Congress or a member of a Congressional staff to talk
11 to them.

12 Then he called back later and said we've
13 changed our mind, I've canceled the appointment,
14 something to that effect, that he didn't keep the
15 meeting. And I sort of have a recollection that he
16 said this to me in the context of you see, I'm doing
17 this to show my good faith, I'm not playing games
18 with you folks and so on, that type of thing.

19 Q Did you feel that the nature of the
20 conversation about going to Congress was in the arena
21 of playing games itself so that when he said I'm not
22 going to do this --

1 A No. I never considered it as a threat or
2 anything of that nature.

3 Q But Mr. Coleman has said --

4 A Please let me explain. That's my
5 characterization. I'm sure Mr. Coleman didn't say to
6 me I'm not playing games. That's my characterization
7 of that conversation. And all Mr. Coleman was trying
8 to convey to me was that he had decided -- or he and
9 his client had decided to cancel a proposed meeting
10 because he wanted to show his good faith. And he
11 didn't want to get this back into the media, or he
12 didn't want to draw any more media attention to it.
13 It was mentioned to me in that context.

14 Q Did he say who had sought the meeting in
15 the first place?

16 A My recollection is that he had and I --

17 Q If I understand what you're saying is,
18 following the appearance of the Jeff Gerth article,
19 and during the course of the period of time that you
20 were waiting for his response on your offer to come
21 forward and proffer the information he was talking
22 about, that he told you that he had made arrangements

1 to meet with a member of Congress or his staff?

2 A Certainly.

3 Q And told you at the same time that he had
4 decided against doing so and that this was a
5 demonstration of his good faith?

6 A Well, not quite in the -- he didn't tell me
7 this all in the same conversation. He basically
8 called me to tell me that on a certain day, within a
9 few days of the phone call, he was coming to
10 Washington, and he was going to meet with some member
11 of Congress or a staff person or both. And he said I
12 just want you -- I'm just telling you this so you
13 know it, so you're not blindsided, so you're not
14 surprised, blah, blah, blah. I said fine. That was
15 the end of the conversation.

16 Then he called me back after that, probably
17 not the same day, probably a couple of days later,
18 and said oh, by the way, we decided not to have the
19 meeting, and I said okay.

20 Q And is it the case that you never did ask
21 Mr. Coleman why it was he was willing to have his
22 client talk to The New York Times but not the FBI?

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1 A I saw nothing -- I saw nothing to be gained
2 by a confrontational approach to Mr. Coleman. There
3 are a lot of things I could have said to Mr. Coleman,
4 but I didn't say them.

5 Q I'm not saying --

6 A I know.

7 Q I'm just inquiring as to whether you put
8 the question and received some answer.

9 A No, I didn't put the question because I
10 considered it to be offensive and provocative.

11 Q You tried to encourage him to make the
12 proffer?

13 A Absolutely.

14 Q Now, who is -- strike that.

15 When you went down to Little Rock and took
16 over the case, you acquired separate quarters from
17 the U.S. Attorney's office; is that correct?

18 A Yes.

19 Q Do you recall how many attorneys were in
20 that office at that point, roughly?

21 A We located with the FBI in Little Rock.
22 There were no other attorneys there except us.

1 Q I meant in the U.S. Attorney's office at
2 that time.

3 A You mean the staff?

4 Q Yes.

5 A I sort of have a recollection of just
6 making casual -- having considerable discussion with
7 Paula about how big is your staff, and I know she
8 told me, and I don't remember the answer. I sort of
9 have the impression 15 or 20, but that could be way
10 off.

11 Q In your conversations with Ms. Casey when
12 she indicated to you that she felt that she hadn't
13 been treated exactly as she would have liked to have
14 been by senior people at the Justice Department, was
15 that comment tied to her feeling about the timing of
16 the recusal as opposed to the actual fact of a
17 recusal?

18 A I didn't get the impression it had anything
19 to do with timing at all.

20 Q And she didn't provide any further
21 elaboration other than what you've testified about?

22 A To the best of my recollection. And

1 frankly, I didn't see any sense in my making any
2 specific inquiries, because it seemed to me it was an
3 open wound, and it wasn't going to accomplish
4 anything by inquiring, so I let it go.

5 Q From time to time, when you were U.S.
6 Attorney, did you recuse yourself from any matters?

7 A Yes.

8 Q And were there any matters that you sought
9 guidance from the Department of Justice or they
10 initiated guidance to you?

11 A They were all matters in which I initiated
12 the suggestion that I recuse. They never came to me
13 and said that I should recuse.

14 Q In addition to the matters that you've
15 discussed, the attack on Paula Casey personally and
16 The New York Times interview and the business about
17 making an appointment with a member of Congress or
18 staff, Mr. Chertoff brought out this morning that you
19 were advised by Mr. Coleman or someone else that
20 Mr. Coleman had made some effort by contacting the
21 White House to have the case quashed or dismissed.

22 When did that occur, to the best of your

1 knowledge?

2 A I don't know.

3 Q When did you first learn about it?

4 A Late November to mid-December, and I'm just
5 guessing at that.

6 Q Let me see if I can help you on that. This
7 is not a memory test. I just want to see if you have
8 an independent recollection on that. Let me mark as
9 Exhibit 3 for this deposition a newspaper story from
10 The Washington Post dateline, November 10, 1993.

11 (DBM Exhibit 3 identified.)

12 BY MR. BEN-VENISTE:

13 Q I assume this is a NEXIS printout of that
14 story. And it's in the same story that it says that
15 the Justice Department yesterday named a three-member
16 prosecution team, et cetera. And the third paragraph
17 from the last I'll read to you. I'll go up one.

18 "After consulting with high level
19 department officials, Casey said she saw no reason to
20 step aside and that Hale's allegations lacked
21 'specifics.' That came one month after Coleman had
22 contacted the White House about Hale's allegations

1 calling associate counsel William Kennedy in
2 mid-August. 'I told him we have clients with mutual
3 problems developing in a federal investigation down
4 here,' Coleman said yesterday."

5 Does that refresh your recollection?

6 A Yes, it refreshes my recollection. I
7 probably learned about it from reading the newspaper.

8 Q Did you ever ask Mr. Coleman what he was up
9 to in calling the White House to try to get some
10 White House intervention into the U.S. Attorney's
11 investigation?

12 A No, I did not.

13 Q And indeed, that intervention or attempted
14 intervention was met with an indictment that came out
15 of the Arkansas U.S. Attorney's office of Mr. Hale?

16 A That's a characterization. All I know is
17 that the case was eventually indicted. Whether it
18 was indicted in response to that or not --

19 Q Well, not in response to that. In the face
20 of that, let's say, despite that.

21 A That's probably a very fair interpretation.

22 Q Did you understand as a result of your

1 inquiries in the period of time you were now in
2 charge of the investigation where the information
3 predicated the Hale investigation had originated?

4 A No.

5 Q You never learned where the SBA
6 investigation started, or was it an SBA investigation
7 that led to identifying Hale?

8 A I think I know where you're trying to go.
9 The SBA investigation was focused on David Hale and
10 Master's Marketing, whatever the name of his company
11 was.

12 Q Capital Management?

13 A Capital Management. I'm thinking of
14 McDougal's wife. And it was very fact-specific in
15 terms of focusing in on -- I think there's like an
16 \$800,000 transaction. And that also implicated two
17 other people, a fellow named Fitzhugh, and a fellow
18 named Matthews who were eventually indicted as
19 codefendants of Hale. I don't know whether I'm
20 answering your question because maybe I don't
21 understand your question.

22 Q My question is whether Hale got caught in a

1 net through some routine audit, because of further
2 information, or whether there was somebody, in the
3 parlance of the FBI, who dropped the dime on him?

4 A I don't know. That's the simple answer.

5 Q That's the old FBI. It's probably drop a
6 quarter now.

7 A I don't know.

8 Q That was never brought to your attention.
9 Now, let me turn to the issue of the referrals from
10 the RTC. As you indicated, your first conversation,
11 when you were getting a heads-up about this matter
12 back in September, involved principally the Hale
13 matter and then there was some comment about a
14 related matter involving Madison that had been
15 declined by the U.S. Attorney who held office prior
16 to Ms. Casey. That would have been Chuck Banks?

17 A Right.

18 Q When did the Madison RTC aspect of any
19 investigation appear on your screen?

20 A Toward the beginning of November, I think.
21 Those nine referrals didn't come out until, I think,
22 like the first or second week in October. All I know

1 for certain is before I went to Little Rock
2 initially, we had copies of the referrals in our
3 office here in Washington. We obtained those from, I
4 think, the Executive Office for U.S. Attorneys. I'm
5 not 100 percent certain.

6 MR. GICALE: I'm sorry. I didn't hear
7 that.

8 MR. BEN-VENISTE: Why don't you read it
9 back.

10 (The reporter read the record as requested.)

11 BY MR. BEN-VENISTE:

12 Q Who is your principal -- strike that.

13 Were you actually assigned the
14 investigation of those matters?

15 A Yes.

16 Q And was that sort of understood, or did
17 that require some further formal assignment?

18 A Procedurally, those nine referrals were
19 submitted to the U.S. Attorney's office in Little
20 Rock, and it was those referrals which were the basis
21 of the recusal. Prior to the recusal, the U.S.
22 Attorney's office in Little Rock would have handled

1 those referrals.

2 Q Was it the Hale matter that came first or
3 the nine referrals or was it all lumped together?

4 A No, the Hale matter came first.

5 Q When you say the subject of the recusal,
6 was it a combined recusal, as you understood it, on
7 both?

8 A Yes.

9 Q Back in early --

10 A Yes. We didn't know at the time whether it
11 was going to be a combined recusal. One of the
12 concerns that we had was that -- one of the scenarios
13 that could have taken place was that the U.S.
14 Attorney in Little Rock could have recused on the
15 nine referrals and kept the Hale case.

16 Q Or vice versa?

17 A Right. Fortunately, neither of those
18 scenarios occurred, particularly if they had recused
19 on the referrals and kept the Hale case, it would
20 have been very awkward.

21 Q So in any event, establish that you've got
22 the whole ball of wax at the same time?

1 A Right.

2 Q Who was your principal investigative
3 resource with respect to the nine referrals?

4 A The FBI.

5 Q And who at the FBI?

6 A Well, the supervisory special agent
7 responsible was a man named Steve Irons, I-r-o-n-s.
8 There was a case agent assigned to the Hale case
9 whose name is David Reign, R-e-i-g-n. We didn't
10 really have, initially, any Bureau personnel assigned
11 to the referrals in a discrete way. Eventually, we
12 were able to have other agents as well as financial
13 analysts assigned to those.

14 At the beginning, the only person who had
15 any knowledge of the referrals were David Reign and a
16 financial analyst named Gretchen Hall.

17 Q Was Agent Irons knowledgeable about the RTC
18 referrals? Had he been involved with respect to the
19 earlier referral?

20 A I don't know whether Irons was in the
21 Little Rock division at the time of the September '92
22 referral.

1 Q Did you work with Mr. Irons in connection
2 with getting yourself up to speed on the facts
3 involving the referrals?

4 A He and others, yes.

5 Q And who was the principal person at the FBI
6 that you worked with?

7 A The one I went to, the one I had to look to
8 for assistance was Steve Irons. He was the
9 supervisor. And we kept needing more and more and
10 more help, and they had to -- he had to go to his
11 ASAC and his SAC, and they had to go to headquarters,
12 and we met with the ASAC. We met with the SAC. We
13 said we need help, and we eventually got it, but it
14 was not instantaneous.

15 Q And one thing led to another, and now we
16 can read in the newspaper there are 100 FBI agents
17 working for the Independent Counsel.

18 A I guess. I don't know.

19 Q So it's either feast or famine. Did
20 Mr. Irons know the RTC people who were involved in
21 investigating the matters which were the subject of
22 the referral?

1 A When you say did he know them, he knew who
2 they were.

3 Q Did he give you a rundown on people and
4 what he thought about them, who was good, who was
5 not?

6 A In terms of the RTC folks?

7 Q Right.

8 A Not really. The only thing I know is that
9 not only Mr. Irons, but the SAC and the ASAC were
10 totally frustrated with the lack of cooperation
11 coming out of the RTC.

12 Q Did they identify any particular
13 individuals who were responsible for this lack of
14 cooperation?

15 A I don't think so.

16 Q Have you ever heard the name Jean Lewis?

17 A Yes.

18 Q Did you take note of the fact that
19 Ms. Lewis was the investigator responsible for one or
20 more of the referrals?

21 A Yes, I was aware of that.

22 Q Did you ever have any direct dealings with

1 Ms. Lewis?

2 A No.

3 Q Did you ever discuss with Agent Irons or
4 Mr. Pettus or the ASAC what their view was of
5 Ms. Lewis's credibility?

6 A First of all, Mr. Pettus was not the SAC at
7 the time. He had already left. The SAC was
8 Sutkowski or something like that. I'd have to look
9 it up. At any rate, to my recollection, nobody at
10 the Bureau did any kind of character assassination on
11 Jean Lewis.

12 Q That wasn't my question, whether there was
13 an assassination going on. Let me put it another
14 way.

15 Was the subject of leaks to the newspaper a
16 concern of yours regarding the RTC investigation?

17 A Yes, it was, but it was something over
18 which I had absolutely no control.

19 Q I'm not suggesting that you control the
20 leaks, making the leak go faster or slower or
21 plugging it up all together, but rather, I would
22 presume that it was of some concern to you that the

1 information was finding its way into the media that
2 should have been of a confidential nature?

3 A Absolutely.

4 Q Did you discuss that with the members of
5 your investigative team, including the FBI agents
6 assigned to you?

7 A Yes.

8 Q And what were your feelings about the leaks
9 and who was responsible?

10 A I was unhappy that there were leaks. I was
11 not conducting a leak investigation. It had been
12 suggested to me by -- not Steve Irons, but David
13 Reign, I believe, that it was the belief of the
14 Bureau that Jean Lewis was responsible for the
15 leaks. I was told that Jean Lewis had a conversation
16 with, I think, David Reign, in which Jean Lewis said
17 to him that a newspaper reporter camped out on her
18 front doorstep for three hours, and she took pity on
19 this person and invited them in for a cup of
20 coffee -- maybe I got it wrong.

21 The newspaper reporter was camped out on
22 her front doorstep. She took pity on the person and

1 invited them in for coffee and spent three hours
2 chatting about the weather.

3 Q I guess it made a difference under those
4 circumstances which part of the three hours was on
5 which side of the threshold?

6 A Right. You know, it caused David Reign to
7 be somewhat suspicious, but Jean Lewis did not tell
8 this reporter one word about any of the referrals.

9 Q And in this context, either at this time or
10 before, was there a discussion about whether the FBI
11 was of the view that Ms. Lewis was trying to pump
12 them for information about the FBI investigation?

13 A I'm not -- let me say this: I know that
14 there was discussion by the Bureau that they felt
15 uneasy in dealing with the RTC people because their
16 feeling was that the RTC wanted to know everything
17 that they were doing before they did it. I don't
18 recall Jean Lewis being mentioned specifically by
19 name with reference to that overall concern.

20 Q Given the problems with the leaks or even
21 without the problems with the leaks, is it
22 appropriate for the FBI to be providing information

1 to an RTC investigator, once a case has been
2 referred, about what the FBI is going to do?

3 A Not at all. It is not appropriate.

4 Q Did there come a time that you learned that
5 somehow Mr. Iorio and/or Jean Lewis had suggested
6 that you told them that there was some anonymous note
7 attached to a document you were provided at the
8 Department of Justice suggesting that the powers that
9 be wanted you to tank the Hale investigation?

10 A The way it was related to me in the form of
11 a question by a newspaper reporter who left a voice
12 mail on my machine, was that it was his understanding
13 that Richard Iorio had said that I -- Iorio claimed
14 that I had made a statement -- Iorio was down in
15 Kansas City -- to the effect that there was a yellow
16 sticky on the original DOJ file involving the
17 September 1992 referral to the effect that it
18 wouldn't bother Justice if the thing went away, words
19 to that effect.

20 Q Let me read to you, if I can, from Jean
21 Lewis's prepared statement provided to the House
22 Banking committee on August 8th and 9th, 1995 at page

1 13. "In addition, I was informed of a meeting in
2 November 1993 between Special Prosecutor" they're
3 calling you "Donald Mackay, PLS, senior management
4 and investigations senior management at which
5 Mr. Mackay said his copy of criminal referral number
6 C0004 had arrived with an unsigned Post-it note on it
7 stating 'we wouldn't be unhappy if this went away.'"

8 A I didn't say that. There was no yellow
9 Post-it note on any file.

10 Q Is this just made up?

11 A No. What I suspect was the source of this
12 is, I had a discussion with Richard Iorio in Kansas
13 City in which Mr. Iorio was somewhat critical of the
14 United States Attorney's office in Little Rock for
15 declining the September 1992 referral. And I told
16 Mr. Iorio that the decision by the U.S. Attorney's
17 office to decline that prosecution had been approved
18 at the highest levels of the criminal division in the
19 Department of Justice. That's what was said.

20 MR. GICALE: That's what you said?

21 THE WITNESS: That's what was said. That's
22 what I said. That's all. So Iorio wants to put a

1 spin on it saying yeah, they wouldn't have been
2 unhappy if the thing went away. That's not an
3 incorrect statement.

4 BY MR. BEN-VENISTE:

5 Q That's a long way from an unsigned Post-it
6 note stating "we wouldn't be unhappy if this went
7 away."

8 A Right. Exactly.

9 Q To come back for a moment to Mr. Coleman,
10 was it your view that Mr. Coleman was a seasoned
11 criminal law practitioner?

12 A Yes.

13 Q So he wasn't the babe in the woods in this
14 matter?

15 A No. He knew what he was doing.

16 Q We talked for a moment earlier about the
17 eventual agreement that was entered into between the
18 government and Mr. Hale.

19 A Is this the plea agreement you're talking
20 about?

21 Q Yes.

22 A I've never seen it.

1 Q Let me show it to you. It's a public
2 record. Let's mark it Number 4.

3 (DBM Exhibit 4 identified.)

4 BY MR. BEN-VENISTE:

5 Q I'm marking both the plea agreement and the
6 superseding information as Exhibit 4, and I don't
7 want to be unfair to you in hitting you with
8 something that you hadn't had the opportunity to
9 review previously, so let me read what I regard as
10 the pertinent parts of it into the record, and then
11 ask you a question about it.

12 It is a letter agreement from Robert B.
13 Fiske, Jr., agreed and consented to by Mr. Hale.
14 Mr. Coleman has also signed as associate counsel to
15 Mr. Fiske, Rusty Hardin and Dennis J. McInerney. It
16 says here that the government will accept a guilty
17 plea from Mr. Hale to criminal information charging
18 him with violations of 18 USC section 371 and 18 USC
19 1341 and 2. These charges carry a maximum sentence
20 of five years imprisonment, a maximum term of three
21 years supervisory lease and then fines which are
22 enumerated. The total maximum sentence of

1 incarceration on both counts is 10 years
2 imprisonment.

3 Was that, to your recollection, above or
4 below the proposition that the U.S. Attorney's office
5 had made to Mr. Hale's attorney?

6 A Well, to my knowledge, U.S. Attorney's
7 office never made an offer to Hale.

8 Q Didn't they say that Hale would have to
9 plead to a felony?

10 A Yes.

11 Q And here, he's pleading to two felonies?

12 A Three, actually. You're talking about
13 what, 1341 and 1343?

14 Q No, 1341, section 2, the aiding and
15 abetting section.

16 A All right, the aiding and abetting.

17 Q So it's two counts, but each carrying a
18 five-year penalty.

19 A Yes.

20 Q Here Mr. Coleman was negotiating about
21 pleading to a two-year felony, assuming you could
22 fine --

1 A That's what he wanted, and my understanding
2 is the U.S. Attorney's office said no.

3 Q They said well, you're going to have to
4 plead to a felony. This was a change, as Ms. Casey
5 says, in the memo that you're referring to, which
6 I'll identify again for the record as 16574, which is
7 up from his insistence on either immunity or a
8 misdemeanor, and now he's up to a two-year felony,
9 and this is two five-year felonies that he's pleading
10 to; is that correct?

11 A That's from what you're reading.

12 Q And then it is reflected that Mr. Hale will
13 cooperate and in his cooperation will be made known
14 to the sentencing judge, and if he qualifies, he will
15 be provided with a 5K1.1(a)(1)-(5) letter, which
16 essentially allows the court to depart from the
17 sentencing guidelines; is that correct?

18 A That's correct.

19 Q Under those circumstances, do you have any
20 reason to believe that this agreement was entered
21 into without Mr. Hale making a proffer?

22 A No, I don't.

1 Q So that following the proffer that he made
2 and the evaluation of the proffer, Hale was willing
3 to enter into a plea agreement that was substantially
4 more onerous or potentially more onerous than that
5 which he was holding out for initially. Is that fair
6 to say?

7 A I don't know, because it's common practice,
8 particularly where there is a conspiracy count
9 involved under 371 that you want to take a plea to
10 the conspiracy, as well as a substantive count,
11 realizing yeah, there's a five-year cap on each one.
12 It's very unusual that judges in this day and age
13 impose consecutive sentences. So from my view, this
14 is the functional equivalent of a plea to one felony.

15 Q To one five-year felony?

16 A Yes.

17 Q So even if you were to say it would be very
18 unusual to sentence consecutively on a two-count
19 indictment of this nature, that there wasn't any
20 particular benefit to Hale in pleading to two felony
21 counts as compared to one?

22 A No, no. I mean, the big question there is

1 the 5K1. I mean, if the government files the 5K1,
2 that's a very strong message to the court, give the
3 guy a break.

4 Q And that's a function of the value of any
5 cooperation he provides?

6 A Right.

7 Q But the question of a 5K1 letter was not
8 one that Paula Casey was reluctant to provide, was
9 it, if Mr. Hale qualified for it? And when I say
10 Ms. Casey, I mean her office.

11 A Wasn't there something somewhere -- and I'm
12 just trying to recall -- there was some discussion
13 about not -- the U.S. Attorney's office not wanting
14 to do a 5K1, but rather doing a Rule 35 because
15 that's a very conservative view by some prosecutors.
16 They won't do 5K1s. They'd rather do Rule 35s. It's
17 understandable the defendant wants the 5K1.

18 Q He hadn't gotten to that point. He was
19 still inching his way up to a two-year felony?

20 A Right.

21 Q Let me show you Exhibit 17496 continuing to
22 97 that indicates with respect to a conference on

1 10/21/93, Michael Johnson and Paula Casey had
2 provided among the elements of a plea proposal, that
3 they were providing the same 5K1 treatment?

4 (Witness reviewed document.)

5 A What --

6 Q The question was whether a 5K1 letter was
7 on the table.

8 A It was certainly discussed in these notes
9 that you've just shown to me. These notes purport to
10 represent notes of a discussion between Randy
11 Coleman, Paula Casey and Michael Johnson on
12 October 21, 1993, and there is a notation on page 2,
13 item number 7, "if proffer accepted would make 5K1 or
14 Rule 35. 5K1 at time of sentencing Rule 35 after
15 sentencing. Matter of timing. If DH sentence before
16 cooperation completed." I mean, the only thing I see
17 there is, it's still an open question as to whether
18 they're going to do a 5K1 or Rule 35.

19 Q And that would depend on whether a court
20 would extend the period of time for cooperation
21 before sentencing?

22 A So I mean, the answer to your question is

1 yes, there's reference to a 5K1 in these notes.

2 Q When you provided the guidance to the FBI
3 agents who were going to pick up documents from David
4 Kendall at Williams & Connolly and suggested that
5 there ought to be no interview of Mr. Kendall by the
6 FBI, it would be somewhat unusual for the FBI to be
7 trying to interview a lawyer who was providing
8 documents to them pursuant to an agreement among
9 lawyers. Isn't that so? Let me put it another way.

10 Were you just trying to make sure that
11 nothing unusual happened by an overly aggressive FBI
12 agent who was sent to pick up those records?

13 A No, not at all. I was simply passing on a
14 directive from Allen Carver to the agents. I had no
15 concern at all in my mind that Dana Gillis would do
16 anything other than an appropriate interview, if an
17 interview was to be done. And I'm not suggesting
18 that anything other than the imminent coming on board
19 of a special prosecutor motivated Carver to tell me
20 to do that.

21 Q Had you directed the FBI agent involved to
22 interview the lawyer?

1 A The original plan was that I was going to
2 go to David Kendall's office at the same time as the
3 FBI agents went there to pick up the documents, and
4 that in the presence of the FBI agent, I would
5 interview -- maybe that's the wrong term -- that I
6 would talk with David Kendall concerning whether
7 claims of privilege were being asserted to the
8 production of any documents because there was some
9 confusion and misunderstanding in our minds as to
10 whether or not David Kendall was producing all of the
11 documents that he, in fact, had in his possession or
12 in the possession of Williams & Connolly.

13 And we wanted to clarify that, and it was
14 felt that the -- it was an important enough issue, an
15 important enough question that it was advisable to
16 have an FBI agent there to take notes and to write up
17 a 302 of what Mr. Kendall told us.

18 Q Wouldn't you accomplish the same thing by
19 writing Mr. Kendall a letter and asking that
20 question?

21 A Could have, but I was not -- let me put it
22 this way --

1 Q You put forward this proposal and
2 Mr. Carver said don't --

3 A No. Mr. Carver is the one who put forward
4 the proposal. Mr. Carver was the one that directed
5 that that happen. Mr. Carver then later said cancel
6 it all. Make it unhappen. Don't do it, so we didn't
7 do it.

8 Q You weren't in the loop, other than as an
9 intermediary transmitting this --

10 A Right. I was not in a policymaking mode on
11 that at all.

12 MR. BEN-VENISTE: I have nothing further.
13 Thank you very much.

14 MR. GICALE: Just one minute, please.

15 EXAMINATION

16 BY MR. GICALE:

17 Q I'm going to show you, Mr. Mackay, a
18 document which is identified as 018880. It's a
19 document dated January 3, 1994 to George Randy
20 Coleman from yourself with respect to the proffer.

21 Is that the letter that you referred to in
22 your -- in Mr. Ben-Veniste's question to you as to

1 whether or not some correspondence was sent -- you
2 testified to in November that you sent to Mr. Coleman
3 with respect to this proffer?

4 A I'm not sure that I sent him the letter in
5 November. I started having discussions with him in
6 November about a proffer, but this exhibit that
7 you've just placed in front of me is, in fact, a copy
8 of the proffer letter that I sent to Mr. Hale and
9 bears the date of January 3, 1994.

10 MR. SGRO: We should put on the record it's
11 a two-page document.

12 BY MR. GICALE:

13 Q Mr. Mackay, you testified that you had the
14 benefit of the nine referrals in your possession when
15 you took over the case?

16 A Yes.

17 Q Did you also have a copy of the first
18 referral and the exhibits that were attached to it
19 for your review?

20 A Not at the time. I wasn't even aware that
21 there was a first referral until later, and when I
22 did become aware of it, I acquired a copy of the

1 first referral.

2 Q And did you or your team of prosecutors and
3 agents also have access to the exhibits that had been
4 attached to that first referral?

5 A Yes. We would have through the RTC. We
6 reopened the first referral when we learned about
7 it. So we basically were working 10 cases instead of
8 nine.

9 Q You were working Hale plus the 10
10 referrals?

11 A Correct.

12 Q With respect to the arrangement with
13 Mr. Kendall on the delivery of the documents, do you
14 know why Mr. Carver changed his mind?

15 A As to us going on the interview?

16 Q Yes.

17 A My understanding was the fact that special
18 counsel would be named imminently. I believe the
19 decision by the Attorney General had already been
20 breached, that she was going to appoint a special
21 prosecutor and that the person to be appointed had
22 not yet been identified.

1 It was Mr. Carver's feeling, as expressed
2 to me, that since any day now a special prosecutor is
3 going to be appointed and we're going to be out of
4 the case, don't do anything.

5 Q Of course, "don't do anything" could have
6 also meant don't get the documents?

7 A I understand that, but he basically made
8 the decision -- maybe it wasn't him. It might have
9 been Jerry McDowell in concert with him, and it was
10 their decision that we shouldn't -- that I shouldn't
11 go over there and interview or talk with David
12 Kendall concerning the claims of privilege.

13 Q Why was there this concern that you didn't
14 think you were getting all of the documents?

15 A Because I had had previous telephone
16 discussions with David Kendall concerning the scope
17 of the subpoena and what he intended to produce in
18 response to the subpoena. And there were basically
19 conflicting or inconsistent statements made by
20 Mr. Kendall on that subject. In one discussion, he
21 indicated to me that with respect to some documents,
22 they were going to assert a claim of privilege.

1 MR. SGRO: If I can just jump in here at
2 this point, can we go off the record for one second.

3 (Discussion off the record.)

4 BY MR. GICALE:

5 Q What were the inconsistencies again?

6 A There were inconsistencies as to whether or
7 not David Kendall was going to assert a privilege
8 with respect to the production of some of the
9 documents. On one occasion, he indicated he was
10 going to assert a privilege. On another occasion, he
11 indicated he might not assert the privilege.

12 We started talking -- or he start talking
13 about hypotheticals, and the state of the record was
14 such that it was, to be charitable, confusing as to
15 what exactly David Kendall considered to be his
16 obligation to produce under the subpoena.

17 Q And so this opportunity to talk with him
18 was an attempt to try and clarify that?

19 A Absolutely, because keep it in this
20 context. At that time we were supposed to pick up
21 the remaining three boxes or four boxes of
22 documents. There had earlier been a partial

1 production, and they had made arrangements for the
2 FBI to go over to Kendall's office on this particular
3 date and pick up the remainder.

4 So the thinking was well, that would be a
5 good opportunity, good time to clarify with David
6 Kendall exactly what are you producing pursuant to
7 the subpoena, because when this idea was initially
8 conceived, we still had the option of requiring David
9 Kendall to personally appear in front of the grand
10 jury and testify under oath, right hand to God,
11 exactly what he was producing and precisely whether
12 or not he was producing everything in response to the
13 subpoena, or was he withholding production of certain
14 documents under a claim of privilege.

15 We still had that option. And we may well
16 have exercised that option. And it was the common --
17 I guess the consensus in terms of DOJ's view, well,
18 maybe we don't have to go to that extent. Maybe we
19 can sit down and clarify this with David Kendall in
20 his office when he turns over the second -- or
21 remaining group of documents to the Bureau.

22 Q Assuming you were satisfied, you would --

1 A Right. If we were satisfied with the
2 explanation, we probably would not have insisted upon
3 his appearance in front of the grand jury. Were we
4 not satisfied with his explanation, we had several
5 options open to us. One, require him to come into
6 the grand jury and explain it, or two -- and probably
7 what we would have done was issue an additional
8 subpoena to David Kendall saying okay, now give us
9 everything that you're holding back. And you have a
10 choice now, Mr. Kendall. Either give it to us or go
11 in on a motion to quash, but we're going to have to
12 get this resolved because we can't have this
13 uncertainty.

14 Q As a result of those instructions, you
15 didn't go --

16 A I didn't go. I was told not to go. It
17 didn't bother me.

18 Q So the uncertainty was not resolved?

19 A No.

20 MR. GICALE: I have nothing further.

21 EXAMINATION

22 BY MR. BEN-VENISTE:

1 Q It was not resolved by you at that time?

2 A It was not resolved by me at that time. It
3 may have later been resolved by Bob Fiske. I just
4 don't know.

5 MR. GICALE: Just one question.

6 BY MR. BEN-VENISTE:

7 Q The proffer letter, now that we have it in
8 the record, reflects your testimony earlier that you
9 were providing the opportunity to Mr. Coleman to make
10 a proffer, to have his client make a proffer prior to
11 you, the department, deciding as to what charges
12 would be filed against Mr. Hale; is that correct?

13 A What, if any, yes, that's correct.

14 Q And so that was clearly in front of him
15 early on, but as you say, he never did respond to it?

16 A Right. Let me put it this way. It was
17 memorialized in written form on the date of that
18 letter, which I think says January 3 of 1994.
19 However, the substance of what is contained formally
20 in the letter was discussed with Mr. Coleman much
21 earlier than that.

22 Q That was as early as November, you say?

1 A Yes.

2 MR. BEN-VENISTE: Nothing further.

3 MR. GICALE: I have nothing further.

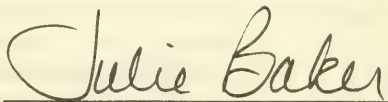
4 (Whereupon, at 3:46 p.m., the deposition
5 was concluded.)

6
7 -----
8 DONALD B. MACKAY
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

[illegible]

1 RPTS WATT

2 DCMN KRISTOFFERSEN

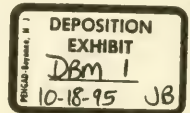
3
4 COMMITTEE ON BANKING AND FINANCIAL SERVICES
5 U.S. HOUSE OF REPRESENTATIVES
6 WASHINGTON, D.C.
7
8

9 - - - - - x
10 In the matter of: :
11 MADISON GUARANTY : DEPOSITION OF
12 SAVINGS & LOAN : DONALD BRUCE MACKAY
13 - - - - - x
14

15
16 Wednesday, September 20, 1995

17
18 Washington, D.C.
19
20

21 The deposition in the above matter was held in Room 714,
22 O'Neill House Office Building, commencing at 10:21 a.m.
23
24
25



Appearances:

Staff Present for the Banking and Financial Services Committee: Thomas Clark, Esq., Senior Counsel; Jackson R. Sharman, III, Esq., Special Counsel; and Angela Garcia, Minority Staff.

For Mr. Mackay:

CHARLES SGRO, ESQ.
U.S. Department of Justice
10th and Constitution Avenue, N.W.
Washington, D.C. 20530

1 WHEREUPON,

2 DONALD BRUCE MACKAY,

3 a witness in the above-entitled matter, was called as a
4 witness, and having been first duly sworn or affirmed to tell
5 the truth, the whole truth, and nothing but the truth, was
6 examined and did testify as follows:

7 Mr. Clark. Good morning, Mr. Mackay. My name's Tom
8 Clark. I am senior counsel to the Committee on Banking and
9 Financial Services. With me is Jack Sharman, who is special
10 counsel to the committee. I appreciate you being here today.
11 Thanks for coming over. Also present today is minority
12 professional staff member, Angie Garcia.

13 As you may know, the committee is investigating the
14 failure and resolution of Madison Guaranty Savings & Loan
15 Association and related matters, including the executive
16 branch's handling of Madison Guaranty. Most of my questions
17 will be related to that area. I will have some questions for
18 you. I'll probably show you some documents. After I'm
19 finished, Ms. Garcia may have some questions for you. After
20 Ms. Garcia is finished, counsel for the Department of Justice,
21 Mr. Sgro, may ask questions, too.

22 This deposition is not governed by the Federal Rules of
23 Civil Procedure, but objections may be made for the record.
24 If an objection is made, the question will either be
25 withdrawn, re cast, or allowed to stand, in the discretion of

1 the questioner.

2 If there is an instruction not to answer a question and
3 the instruction is followed, Majority staff, in consultation
4 with Minority staff, will determine if the deposition is to
5 proceed or if a recess must be called to obtain the chairman's
6 instructions, if any. In a spirit of cooperation, however,
7 the committee hopes to avoid reaching that point.

8 For the record, the committee and the Department of
9 Justice have engaged in a dialogue concerning whether the
10 Department would allow persons deemed trial attorneys to
11 testify. The Department has stated its general policy on this
12 subject, and the committee has stated its views. While the
13 committee does not necessarily agree with or accept the
14 Department's policy, in a spirit of cooperation, I, on behalf
15 of the Majority, will attempted to focus my questioning to
16 avoid areas that involve matters of the exercise of
17 prosecutorial discretion by this witness.

18 Mr. Sgro. I'd like to make a short statement. First,
19 Mr. Mackay is appearing voluntarily, as has been the case
20 throughout these proceedings. The Department has been willing
21 to work with the committee to try and aid them in their
22 inquiry.

23 By September -- correspondence dated September 19th,
24 1995, the Department indicated to Mr. Sharman that Mr. Mackay
25 was being produced voluntarily and that we would --

1 questioning of the committee is expected to focus upon the
2 factual matters of the investigation and any involvement of
3 Mr. Mackay. Any questions concerning prosecutorial discretion
4 would be deemed inappropriate from the perspective of the
5 Department.

6 Ms. Garcia. I'd just like to add at this time that the
7 Minority will comply with the Department's request.

8 EXAMINATION BY MR. CLARK:

9 Q Okay. Mr. Mackay, I don't think that this will take
10 too long, but it's not a marathon. If you want to take a
11 break, just say so. If you don't understand a question, just
12 tell me, I'll rephrase it.

13 A Okay.

14 Q Okay. Let's start from the very beginning. Would
15 you just state your name for the record?

16 A Donald Bruce Mackay.

17 Q Mr. Mackay, what year did you graduate from law
18 school?

19 A 1963.

20 Q '63?

21 A Yes.

22 Q Okay. And immediately upon leaving law school, did
23 you practice law?

24 A After I passed the bar, I took a job as an assistant
25 state's attorney in McLean County, Illinois. So if -- I think

1 that would probably generally qualify as the practice of law.

2 Q And so that was -- that was approximately '64 or --

3 A In June of 1963 is when I went to work down there.

4 Q Okay. And how many years did you work in the
5 prosecutor's office?

6 A I think until like the end of 1964.

7 Q Okay. Now, in my last question I made a slight
8 assumption which I just want to be clear about it. Was it a
9 prosecuting office?

10 A Yes, it was.

11 Q And the matters that you handled were criminal
12 matters?

13 A Right.

14 Q Okay. Once you left that office --

15 A Right, I --

16 Q -- what did you do?

17 A I left there, and I went into the private practice
18 of law in Bloomington, Illinois. In 1965 I was appointed as
19 the public defender of McLean County, county seat of which is
20 Bloomington. At that time the public defender's position was
21 a part-time position, so I was able to serve as the public
22 defender and also have my own law practice. I did that until
23 1970, '71 maybe. I left as public defender at the end of
24 1970.

25 I maintained my private practice until roughly May of

1 1971, when I was appointed as the United States attorney for
2 the then Southern District of Illinois. I held that position
3 until roughly March of 1977.

4 Q Okay. So that was for approximately six years?

5 A Correct.

6 Q That would have been during the administrations of
7 which Presidents?

8 A President Richard Nixon and President Gerald Ford.

9 Q Okay. What's the largest metropolitan city that was
10 encompassed within the Southern District of Illinois at that
11 time?

12 A It's hard to say. The reason is, I never thought of
13 it in those terms. There were, I would say three, four large
14 metropolitan areas. There was Springfield, which is the State
15 capital, which was where the office was. There was Peoria,
16 which was within the district, in the western part of the
17 district; Rock Island, the northern part. There was Madison
18 County in the southern part of the district. There were a
19 number of small towns down there. I suppose the largest town
20 there would have been Alton. Then we picked up Decatur in the
21 eastern part of the district; it's a fairly large town.

22 Q Okay.

23 A I may be missing a few.

24 Q Sure.

25 A It's been a while.

1 Q Sure. How many assistants did you have working for
2 you?

3 A Four.

4 Q Did you say four?

5 A Yes.

6 Q For the entire district?

7 A Right.

8 Q And is that both criminal and civil?

9 A Right.

10 Q Okay. And were you personally trying cases when you
11 were the U.S. attorney?

12 A Yes.

13 Q In the six years that you were U.S. attorney,
14 approximately how many cases did you try?

15 A I would have to guess 8 to 10.

16 Q And were there other matters that you were
17 personally involved which -- involved with in which pretrial
18 dispositions were arrived at?

19 A Yes.

20 Q Okay. And can you just give me an approximate
21 number of those cases? Just ballpark.

22 A Five hundred to a thousand. I mean that's an awful
23 big spread, but that's the best I can do right now.

24 Q I understand. We're not trying to pin you to a
25 specific number, we're just trying to get, you know, some

1 generalized idea.

2 And once you left the U.S. Attorney's Office for the
3 Southern District of Illinois, what did you do immediately
4 thereafter?

5 A I went to work for the office of the Illinois
6 Attorney General as the assistant attorney general in charge
7 of the Criminal Justice Division.

8 Q And what were your duties and responsibilities in
9 that position?

10 A Basically to supervise a number of attorneys and
11 investigators in handling all of the criminal appeals for the
12 State of Illinois and the Illinois Supreme Court and in the
13 United States Supreme Court; handling appeals in the 7th
14 Circuit Court of Appeals.

15 We also had a prosecution assistance function where we
16 would send lawyers out into various counties at the request of
17 local State's attorneys to try cases.

18 We were also responsible for criminal prosecution of
19 violations of the Illinois tax laws. We also handled all of
20 the Federal habeas corpus proceedings by Illinois inmates, or
21 noninmates. We also handled the, what we called prisoners'
22 rights cases. We defended the Illinois Department of
23 Corrections every time an inmate filed a lawsuit against
24 them. We covered a lot of ground.

25 Q And approximately how long did you remain in that

1 position?

2 A Roughly three -- roughly three years.

3 Q So that takes us up to approximately 1980?

4 A Right. 1980, I went into -- I reentered the private
5 practice of law in Chicago.

6 Q In Chicago, did you practice with other attorneys?

7 A Yes.

8 Q How many other attorneys did you practice with?

9 A Well, at the time I went in with this firm there
10 were three others.

11 Q And was there a particular area of the law that you
12 concentrated your practice on at that time?

13 A I would say just, you know, in a very general sense,
14 commercial litigation, criminal defense, administrative
15 hearings, appeals, whatever.

16 Q Just a broad array?

17 A Yeah, sort of a general practice.

18 Q And did there come a time when you left that
19 association or affiliation --

20 A Yes.

21 Q -- with those other attorneys?

22 A Yes. In late 1985 I took a position with the
23 Illinois Department of Revenue as the -- I forget what they
24 call it -- manager, supervisor, something like that, of the
25 Income Tax Legal Division. Basically what we did is, we

1 handled administrative hearings on behalf of the Illinois
2 Department of Revenue. These were civil cases, not criminal
3 in nature.

4 Q And was your -- what were your particular duties and
5 responsibilities in the position you occupied at that time?

6 A Basically supervising the staff of attorneys and
7 nonattorney tax experts, auditors, tax examiners. It's a
8 strange -- it was a strange situation. I think they have this
9 in a lot of other State jurisdictions, where the employees of
10 the Department of Revenue who were acting as the
11 representative of the Department in prosecuting -- I don't
12 want to use the word "prosecuting," but in representing the
13 Department in civil tax cases, the Department was also acting
14 as the administrative law judge. So we had sort of like two
15 sides of the house there. I had one group of folks who were
16 the attorneys representing the Department; I had another group
17 of folks who were basically administrative law judges hearing
18 the casings. I mean it's a strange situation.

19 Q And you were supervising both groups?

20 A Correct.

21 Q And you remained in that position until when?

22 A 1991. I mean I didn't stay in that same position,
23 but I stayed with the Department of Revenue until --

24 Q Okay. And what happened at that point?

25 A I left there, and came to work for the Fraud

1 Section, Department of Justice.

2 Q How was the process of your joining the Department
3 initiated?

4 A I sent a letter, fellow named Lawrence Urgenson, I
5 believe at the time, who was then the chief of the Fraud
6 Section. I had learned from others that the Fraud Section
7 had -- at that time was looking for people. I mean that's how
8 it started.

9 Q In other words, you submitted an unsolicited --

10 A Right.

11 Q -- letter?

12 A Right.

13 Q And were you applying for a position in a component
14 of the Department or at main Justice in Washington?

15 A At main Justice here in Washington.

16 Q Who did you interview with in the application
17 process?

18 A First interview was with Donald Foster, who is the
19 deputy in charge of administration in the Fraud Section; and
20 there were some other people I think I talked with that same
21 day, a fellow named John Arterberry, who was the deputy in
22 charge of the bank fraud unit. And I believe I also that day
23 met a man named Allen Carver, who was the principal deputy
24 chief of the Fraud Section.

25 Q And was it your intention at the time to relocate to

1 this area, the Washington metropolitan area?

2 A Yes.

3 Q When you were involved in the application process,
4 did you have any discussions regarding travel that you might
5 be asked to undertake on behalf of the Department?

6 A Yes.

7 Q Were there any limitations that you requested or
8 any --

9 A No.

10 Q -- ceiling?

11 A (Shakes head side to side.)

12 Q Upon joining the Department in 1991, were you
13 assigned to a particular area --

14 A No, just --

15 Q -- within the Fraud Section?

16 A Just to come to Washington and go wherever they sent
17 me.

18 Q Okay. But within the Fraud Section?

19 A Oh, yeah, I mean -- yes, I'm sorry. I was assigned
20 to the bank fraud group.

21 Q Okay.

22 A I don't know whether you want to call it group,
23 unit, whatever.

24 Q How many people were in that group when you joined?

25 A Gee, a lot.

1 Q A ballpark figure is fine.

2 A Yeah, maybe 30, 40 people. It could be more than
3 that; I just -- I don't remember.

4 Q It was a substantial number?

5 A A lot of people, yeah.

6 Q Okay. And prior to the fall of 1993, did you have
7 any trials, between '91 and '93?

8 A Yes, yes.

9 Q About how many?

10 A Two.

11 Q Two? Were they -- well, the first one, was it here
12 in Washington?

13 A No.

14 Q Where was that?

15 A In Atlanta.

16 Q At the time that you first became involved in the
17 matter that resulted in the trial in Atlanta, was it still in
18 the investigatory stage?

19 A No, the case had already been indicted.

20 Q Okay. Was it a lengthy trial?

21 A Trial time itself was about four weeks.

22 Q And was that concerned with bank fraud?

23 A Actually it was more of a commodities, securities
24 fraud.

25 Q How many defendants, do you remember?

1 A There were two. There is still a defendant at large
2 in that case.

3 Q A fugitive?

4 A (Nods head up and down.)

5 Q Never close those cases.

6 A We know where he's at. We've been trying for two
7 years to get him back here, but so far without an awful lot of
8 success.

9 Q You mentioned that you had a second trial. Where
10 was that?

11 A In New Hampshire.

12 Q And approximately how long did the trial last in
13 that case?

14 A Six weeks.

15 Q How many defendants?

16 A Three. Three defendants that went to trial. There
17 were more than three defendants in the case.

18 Q Okay, I appreciate that. And in that instance, were
19 you involved in the investigatory stage or did you come aboard
20 post indictment?

21 A Post indictment.

22 Q And what was the nature of the crimes charged in
23 that instance?

24 A Bank fraud, misapplication of funds, false
25 statements.

1 Q How did you first learn that there was an
2 investigation involving what I'll generally call banking
3 practices in Arkansas, in which the names of either Mr. or
4 Mrs. Clinton had arisen?

5 A In September of 1993.

6 Q And can you tell me the process or the means by
7 which the information was communicated to you?

8 A Yes. I was asked to go in to see Allen Carver --
9 I'm sorry, my voice is in real bad shape.

10 Q Take your time.

11 A I mean I was talking to the court reporter, because
12 I know she's having difficulty in hearing what I'm saying. I
13 was asked to go to see Allen Carver. Dwight Bostwick, who was
14 another Fraud Section attorney, was also asked to go in there;
15 and John Arterberry, who was my immediate superior, and who
16 was Bostwick's immediate superior, was also present.

17 Allen Carver basically told us that there was an
18 investigation or -- I shouldn't say investigation, but that
19 there had been some referrals of bank fraud violations made by
20 the RTC to the United States Attorney's Office in Little Rock,
21 Arkansas, and that there was a newspaper reporter, I believe,
22 from The New York Times, who had, I guess, contacted somebody
23 at the Department of Justice saying that he had -- let's see
24 if I've got this straight. I'm not sure whether or not --
25 bear with me, if you will. I'm running things together here,

1 and I'm not sure that I'm totally accurate. I mean, let me go
2 back.

3 Q You know, take your time and certainly --

4 A I'm not at all certain that at that meeting there
5 was any real discussion of the referrals or not. What I --
6 what I kind of remember about the meeting was that Allen
7 Carver had told us that there was a reporter from The New York
8 Times who I guess contacted somebody at the Department of
9 Justice saying that, you know, there was some allegations at
10 least of bank fraud involving Madison Guaranty and that there
11 was a fellow named Hale who I think was probable -- yeah, at
12 that time was under investigation by the U.S. Attorney's
13 Office in Little Rock for SBA fraud, and that Hale was making
14 assertions apparently to the newspaper reporter that he,
15 through his attorney, had been in contact with the United
16 States Attorney's Office in Little Rock, suggesting that
17 President Clinton had pressured him, Hale, to make a loan to a
18 place called Whitewater Development.

19 And as I recall -- boy, this is really fuzzy now, but as
20 I recall, there may have been some mention of what -- of
21 Madison Guaranty in this context, too. And, you know, the
22 reporter then supposedly went on to suggest or maybe say that
23 David Hale had attempted to work out a -- thank you,
24 appreciate that -- work out some kind of an accommodation with
25 the United States Attorney's Office in Little Rock, basically

1 trying to get the government to not indict him, and in return
2 for which he was prepared to come in and give them very
3 fact-specific information about the activities of the
4 President, involving suggestions or assertions that he had
5 pressured David Hale and I think maybe people at Madison
6 Guaranty to make a loan to Whitewater Development, and that,
7 you know, the U.S. Attorney's Office in Little Rock might have
8 a conflict, you know, in handling that.

9 Q Yeah.

10 A And, you know, my recollection is Carver then said
11 that, you know, I'm sort of just giving you guys a heads-up;
12 we may get involved in this case; and, you know, basically if
13 we do, you're the guys. That was Bostwick and me at that
14 time. Don't make any travel plans. He didn't give us any
15 documents, he didn't give us any fact-specific information.

16 I think he also indicated at that meeting that a fellow
17 named Irvin -- or Irv Nathan, who I think at that time was a
18 deputy assistant attorney general in the Criminal Division,
19 had also somehow picked up information, you know, pretty much
20 along the same lines of what The New York Times reporter was
21 talking about.

22 Carver's impression at that time, at least the impression
23 I got, was that the story was coming from two different
24 sources: One, from the reporter, and the other from Irv
25 Nathan. And, you know, Carver thought it was a bit

1 coincidental, I guess, that they're hearing almost the same
2 thing from two distinct, separate sources.

3 Carver, as I recall, also gave us a little bit of a
4 history lesson in terms of, you know, something to the effect
5 that there had been an earlier matter involving Madison
6 Guaranty, and I think also linking or suggesting at least a
7 link between President and some wrong -- I mean he wasn't
8 specific about it, or not at all. And I kind of recall him
9 saying, "Well, do you" -- the then U.S. attorney in Little
10 Rock wanted to recuse from the case and that it was just a
11 B.S. case in effect.

12 I think he may have told us that it had been declined.
13 I'm not a hundred percent sure of that. But, you know, the
14 impression I got was, whatever that matter was didn't go
15 anywhere.

16 Q Did --

17 A And that's -- I'm sorry. That's about all I can
18 remember about that meeting right now.

19 Q Okay. Did Mr. Carver indicate that other people in
20 the Department were going to be accumulating further
21 information --

22 A No.

23 Q -- subsequent to this meeting?

24 A Not really. Oh, there was something else that he
25 mentioned, now that I can remember. He said -- yeah, he must

1 have mentioned those new referrals, because he said that they
2 were uncertain as to whether or not the United States attorney
3 was going to recuse herself on the new referrals. And they
4 were also uncertain as to what role, if any, the Fraud Section
5 would play.

6 And, you know, one of the scenarios he laid out was, you
7 know, we might go down there with the, quote, blessing of the
8 United States attorney, and, you know, basically take over
9 these cases, but that the U.S. Attorney's Office would still
10 be involved.

11 In other words, they would have the bottom line
12 jurisdiction. They would be running the show, and we would
13 just be there under their direction. He wasn't sure about
14 that. He said, "Well, or they may just recuse and we'll take
15 the whole thing; we don't know. We don't even know if we're
16 going to get involved."

17 Q Just trying to pin the time of this meeting down
18 some, approximately when, in relation to when you actually
19 learned that Ms. Casey was going to recuse herself or had
20 recused herself, was this meeting?

21 A I would say roughly two months. My best
22 recollection is that this meeting occurred like the first or
23 second week of September.

24 Q After the first meeting that you had with Mr. Carver
25 and Mr. Arterberry, did you have any other meetings prior to

1 learning that Ms. Casey was going to or had in fact recused
2 herself?

3 A The only other meeting that I can recall would have
4 been right about the time that Paula Casey did -- it was right
5 before she recused, okay. And, you know, I say within --
6 probably within a week before. I had heard from Carver and I
7 think possibly Jerry McDowell, who was the section chief at
8 the time, that there had been some meetings with higher-ups in
9 the Criminal Division, and with Paula Casey, and the topic of
10 her recusal was discussed.

11 And actually I had been told that Paula Casey said she
12 was not going to recuse. And, you know, maybe then a day or
13 two later I was told, well, she is going to recuse. And, you
14 know, it was sort of like, get your bags packed.

15 Then the next communication that I recall is a call from
16 Jerry McDowell. He said, All right, ~~he said Paula~~ Casey is
17 recused, but we don't have the recusal letter here yet. But
18 he said I've been assured that she has in fact sent the
19 letter, okay. You're to call Paula Casey in Little Rock and
20 arrange to go down there and, you know, take over the cases.

21 So I did.

22 Q Okay. Let's step back just a second here.

23 A Yeah.

24 Q At what point in time did you learn that Mr. Nixon
25 would be joining you and Mr. Bostwick?

1 A That was long before the recusal, as I recall. This
2 is embarrassing. I just -- it just seems to me --

3 Q I understand that it happened about two years ago.

4 A Yeah. No, I mean it seems to me that, you know,
5 that Jim Nixon was sort of maybe a late entry here, okay. I
6 wanted to -- I started to say, well, it was long before; then
7 I thought, no. I think that Nixon was put on it maybe, I
8 don't know, a week or so before I went down there, but I'm
9 just -- I'm not at all a hundred percent certain of that. I
10 mean I could be way off.

11 Q Sure. Can you recollect there being any changed
12 circumstance that led to Mr. Nixon's joining you --

13 A No.

14 Q -- and Mr. Bostwick?

15 A No, no, not at all.

16 Q Oh, one thing I will mention, you know, is that it's
17 almost an aside, but maybe about a week or so -- week to 10
18 days after Dwight Bostwick and I had met with Allen Carver
19 back in September, ran into Allen in the hallway, and he came
20 over and he said, oh, he said, we found out who Irv Nathan's
21 source is.

22 A And it was funny because Dwight Bostwick and I, I
23 remember, you know, before that, had discussed it, and we half
24 jokingly said to each other, you know, I bet the source is
25 this reporter. Sure enough, that's what it was. So I mean it

1 turned out that there weren't really two sources. There was
2 only one, and Irv Nathan picked it up all from the reporter.

3 I'm sorry, I didn't mean to digress.

4 Q That's quite all right. I appreciate it. There's
5 no objection on my part.

6 Before you left to travel to Little Rock, was it your
7 understanding -- well, withdrawn.

8 Did you have any understanding regarding the length of
9 time that this might take to resolve?

10 A No, no.

11 Q Okay. Had anybody given you -- had anybody
12 discussed with you whether it would be short-term versus
13 long-term?

14 A No. Let me -- let me just add something here
15 parenthetically. My experience in handling any of these
16 matters that I handled for the Department -- you know, go out
17 of town -- they were long-term. I packed every stitch of
18 clothes I owned, okay. You know, turn off the lights, as they
19 say.

20 I mean, you know, these trials, the trials themselves
21 were, you know, maybe, say, fairly short in duration, but I
22 remember that case in Atlanta. I literally wound up almost
23 living in Atlanta for almost six months, just so much to do.

24 So I suppose in my own mind I was not looking at this as
25 a couple of day trips and, you know, forget about it.

1 Q Sure.

2 A I mean I think, you know, I probably viewed it
3 personally as, you know, requiring substantial long-term
4 commitment. But beyond that, I hadn't thought in terms of,
5 you know, months or years or anything like that.

6 Q Okay. And your first two experiences, the Atlanta
7 and New Hampshire experiences, recognizing that you did spend
8 a significant amount of time prior to the trial itself in
9 those jurisdictions, was it -- was there a typical arrangement
10 whereby you were commuting on the weekends?

11 A Oh, yeah, yeah. I mean, you know, of course, you
12 know, the closer we got to trial, you just stayed weekends,
13 too. What the rule was, I mean it's sort of a simple rule to
14 follow. It's driven by money, okay. The rule is real
15 simple. If the cost to the Government for you to come home on
16 the weekend exceeds the cost for ~~you to stay on the weekend~~,
17 you don't come home on the weekend, okay.

18 You know, the air fares between here and Atlanta were
19 such that it was actually less costly for the Government for
20 me to come home on weekends than to stay in Atlanta.

21 Q I'm sure the taxpayers will expect that section to
22 be highlighted.

23 A That's the way they do it.

24 Mr. Sgro. Another example of the Department of Justice
25 looking out for the public trust.

1 EXAMINATION BY MR. CLARK:

2 Q Was it your expectation that Arkansas, you were
3 going to be able --

4 A Yeah.

5 Q -- to commute at least for some --

6 A Right, right.

7 Q -- initial period?

8 A Right. It was a little bit more inconvenient
9 because there are no direct flights from Washington to Little
10 Rock. You have to -- you have to change flights at some
11 place. We had all sorts of options where we could change.

12 Q And of the three attorneys who were assigned to this
13 task -- yourself, Mr. Bostwick, and Mr. Nixon -- was one
14 person in charge or considered the senior member --

15 A Yes.

16 Q -- of the team?

17 Okay. Who was that?

18 A Me.

19 Q Okay. And between Mr. Bostwick and Mr. Nixon, was
20 one more senior than the other?

21 A No. They both started about the same time, I mean,
22 you know, in the Department.

23 Q Okay.

24 A And I -- I tried to treat them equally. I hope I
25 did.

1 Q Sure.

2 A You know, in terms of allocation of responsibilities
3 and work and so on.

4 Q Okay. And had they been with the Department before
5 you got there or --

6 A I think -- no, they -- well, Dwight Bostwick I think
7 actually was hired on before I was, but then he took an
8 extended leave or something, he got married, and long
9 honeymoon. So actually he didn't return until after I had
10 started. And then Jim Nixon started, oh, a month or so after
11 I did, I guess.

12 Q Besides Mr. Carver, was there any individual who
13 communicated to you facts regarding the investigation within
14 main Justice? And I mean superior to you as opposed to
15 Mr. Bostwick and Mr. Nixon.

16 A Well, yeah, Jerry McDowell, ~~who was Allen Carver's~~
17 superior, he would talk me from time to time. And John
18 Arterberry, who was my immediate superior, was, you know, he
19 was in the loop, okay.

20 Excuse me. In terms of anybody at all in the Department
21 communicating to me facts, there really wasn't anybody.
22 Because what happened was, before I went down to Little Rock,
23 we obtained copies of these nine new referrals, okay.

24 Q Okay.

25 A And, you know, I mean, you know, it wasn't -- it

1 wasn't a situation of Carver or anybody telling us the facts.
2 We just got the referrals, and we had to read them.

3 Q Okay. Who -- who provided them to you, do you
4 remember?

5 A This is -- it was odd. We got them -- well, I
6 suppose either Carver or McDowell actually, you know,
7 furnished them to us. But there was a cover letter
8 accompanying those from a woman in the Executive Office for
9 United States Attorneys in the Department. And I say it was
10 odd because, you know, you usually get the referrals from,
11 say, the RTC in this case.

12 I can understand why we didn't, because they had
13 initially been sent to the United States Attorneys Office in
14 Little Rock. Why EOUSA became involved, you know, I don't
15 know.

16 Q Okay.

17 A It could be -- and I'm guessing at this, all
18 right? -- that because of the recusal situation or the
19 anticipated recusal, maybe Paula Casey sent them to EOUSA. Or
20 it's also possible, and it sort of sticks in my mind, that it
21 was Jean Lewis, the RTC investigator, who had furnished these
22 referrals to Donna Henneman. And I can't tell you why I say
23 that. I sort of got that impression somehow.

24 Q Okay. Is Ms. Henneman the person who sent the
25 letter or the transmittal --

1 A Yeah.

2 Q -- message from EOUSA?

3 A Right, there was a cover letter accompanying the
4 referrals, signed by Donna Henneman.

5 Q Trying to place this generally in time, was this
6 close to the time that you assumed responsibility for the
7 matter or --

8 A Yeah. This was -- yeah, because this was all going
9 on pretty much contemporaneously with the, you know, Paula
10 Casey's recused; no, she's not recusing; this type of thing.

11 So, yeah, I'd say a couple weeks.

12 Q The transmittal message that you've referred to, was
13 it addressed directly to you --

14 A No.

15 Q -- or was it addressed to somebody else who routed
16 it to you?

17 A I think it was addressed probably to Jerry McDowell,
18 or possibly Allen Carver, who then gave it to us.

19 Q You had mentioned a bit earlier that Mr. Carver had
20 described an earlier matter involving Madison Guaranty.

21 A Yeah.

22 Q Did you ever see, in the period of November -- of
23 September through November of 1993, the memorandum that was
24 prepared by an attorney in the Fraud Section concerning the
25 first referral?

1 A No, no, I did not.

2 Q Did you ask anybody if you could see it?

3 A No.

4 Q Okay. Now, with regard to the nine referrals that
5 were directed to you, did you have any discussion with any of
6 the persons to whom you reported concerning whether those
7 referrals should be handled in any specific order?

8 A Eventually I had a discussion with Allen Carver
9 about that very topic, but not at that time; it was much later
10 in time.

11 Q Okay. When would you say the discussion with
12 Mr. Carver occurred?

13 A That had to -- well, we were down in Little Rock. I
14 mean we were already working with the FBI, and -- let's see,
15 late November to mid-December. And, once again, I apologize,
16 I would like to be a lot more precise in this, but this is the
17 best I'm capable of.

18 Q Yeah, the record should reflect that Mr. Mackay
19 doesn't have any documents in front of him such as a calendar
20 or a memo pad. So --

21 A What -- the way this came about was that we -- when
22 I say we, I'm talking about what I call the team, all right,
23 Dwight Bostwick, Jim Nixon, and I -- had discussed among
24 ourselves and with FBI folks in Little Rock, you know,
25 administratively how we're going to handle this: Are we going

1 to handle all nine as, you know, one composite unit, or are we
2 going to break it down into nine separate investigations, so
3 to speak?

4 It was our view, after having read through the referrals,
5 because there was so much overlapping and interrelationship,
6 that we should handle them as one composite unit.

7 Q Okay.

8 A Okay.

9 Q Okay. What I'm not --

10 A Carver wasn't particularly in agreement with that.
11 You know, he wanted to see it more bifurcated.

12 Q Okay.

13 A I mean that's what that discussion was. Maybe I
14 misunderstood your question.

15 Q Well, no. I mean in light of the dialogue with the
16 Department, you know, I'm not really ~~so much~~ concerned as to
17 discussions amongst the team as to how to deal with it
18 administratively.

19 But I am questioning some -- my questions somewhat go to
20 conversations you may have had with people to whom you were
21 reporting and maybe statements that they made.

22 Like, for instance, did you have any discussion with any
23 of the persons to whom you were reporting concerning the
24 specific referral that concerned the 1984 Clinton
25 gubernatorial campaign?

1 A The only one who I would have had any discussions
2 with would have been Allen Carver. That, I can narrow it that
3 much.

4 Now, did Carver and I ever discuss -- I mean if your
5 question is, did Allen Carver and I ever discuss specifically
6 allegations that funds from Madison were being diverted to a
7 gubernatorial campaign? I would have to say almost certainly
8 not. Okay. I don't think -- it never got that fact
9 specific.

1 DCMN PARKER

2 Q Okay. Was there ever a conversation with Mr. Carver
3 in which a statement was made that the focus of your
4 investigation should be on particular persons or not being on
5 particular persons at the beginning?

6 A No.

7 Q Okay. Is it fair to say that in your view you were
8 basically permitted to make judgments regarding where your
9 investigation would lead?

10 A Yeah. Yes, I'm sorry.

11 Q Did -- did you have any discussions with Mr. Carver
12 regarding whether the Public Integrity Section of main Justice
13 should be involved in this investigation?

14 A There was a discussion regarding that topic. I'm
15 not a hundred percent certain it was with -- that it was with
16 Allen Carver. I'm not -- I'm not excluding him. My
17 recollection is that Jerry McDowell mentioned to me, and this
18 was probably right about the time I was getting ready to go to
19 Little Rock, okay, McDowell mentioned the possibility that the
20 Fraud Section may share the investigation with the Public
21 Integrity Section. Or -- I don't think that's maybe the way
22 he put it.

23 You know, sort of the impression I got. I think the way
24 McDowell put it is that there might be an attorney from the
25 Public Integrity Section who would be working with us on the

1 investigation, and but McDowell also made it -- at least I
2 thought he made it clear that if that took place, it would
3 still be our primary responsibility. You know, if there was
4 ever going to be any question as to who was in charge, it was
5 going to be us, not the Public Integrity people. But, you
6 know, that's more of an impression I had than anything else.
7 And, you know, all I know is nobody from the Public Integrity
8 Section was assigned to the case. And nor did I ask, you
9 know. I figured that was up to them.

10 Q Did -- did you have any experience prior to your
11 involvement in this matter in prosecuting cases under statutes
12 that concerned deception of any regulatory agency by illegal
13 reimbursement of campaign contributions or matters similar to
14 that?

15 A No.

16 Q Okay. Do you know if Mr. Bostwick or Mr. Nixon had
17 any experience in prosecuting cases --

18 A They did not.

19 Q -- in that area?

20 A I have had experience, though, with that general
21 area. I mean it did not involve regulatory agencies, but this
22 goes back to 1970s.

23 Q Back when you were in the U.S. Attorney's Office in
24 Springfield?

25 A Right, right, yeah, it was basically involving tax

1 violations where contributions were made to congressional
2 campaigns in violation of the Federal Election Campaign laws.
3 And the way it was done was false invoices were submitted by
4 advertising agencies for nonexistent services. So I mean, I'm
5 familiar with --

6 Q Sure.

7 A -- you know, in general, you know, campaign.

8 Mr. Sgro. Excuse me. Can we go off the record one
9 second?

10 Mr. Clark. Certainly.

11 [Recess.]

12 BY MR. CLARK:

13 Q Okay. At the time -- withdrawn. Did there come a
14 time in November of 1993 when you actually traveled to the
15 U.S. Attorney's Office in Little Rock?

16 A Yes.

17 Q Did you go by yourself?

18 A Yes.

19 Q Okay. And the first time that you did that, did you
20 have a specific purpose?

21 A Yes, to essentially meet with Paula Casey and folks
22 in her office, pick up the files. You know, basically find
23 out where the library was, you know, where the men's room is,
24 you know, that type of thing.

25 Q Okay. And at that point was your primary point of

1 communication up the chain of command -- well, who was your
2 primary point of contact?

3 A Allen Carver. Well, let me rephrase that. Both
4 Allen Carver and John Arterberry. It was Allen and, you know,
5 if Allen is not available, get ahold of Arterberry.

6 Q Okay. Did -- on that first trip, did you have the
7 occasion to speak personally to Ms. Casey?

8 A Yes.

9 Q Did she discuss with you the matter of her
10 perception of how she had been treated by people at main
11 Justice in connection with this whole recusal issue?

12 A Yes.

13 Q What do you remember her saying on that subject?

14 A Could I confer for just a second?

15 Mr. Clark. Sure.

16 Mr. Sgro. Sure.

17 [Discussion off the record.]

18 The Witness. She was not very happy. She felt that she
19 had been treated unfairly.

20 BY MR. CLARK:

21 Q Okay. Did she mention any names in particular of
22 people?

23 A I'm sure she did, but I don't know. I mean I
24 can't --

25 Q Okay.

1 A -- tell you now who.

2 Q Okay. Are you familiar with a gentleman named
3 Gerald Stern?

4 A Yes.

5 Q Okay. Can you just identify him?

6 A Gerald Stern is -- I can't tell you what his title
7 is, because I don't -- like I say, I think he's a special
8 assistant to the Deputy Attorney General, maybe to the
9 Attorney General, whose responsibilities are financial
10 institution fraud.

11 Q Okay. When was your first awareness that Gerald
12 Stern held that position?

13 A Oh, I knew that before I went to Little Rock.

14 Q Okay. To your understanding was he going to be
15 involved in any way in the prosecution of Mr. Hale or the
16 investigation of these referrals concerning Madison Guaranty?

17 A No.

18 Q Did anyone tell you that you should not communicate
19 with him on these matters?

20 A Nobody from the Department of Justice told me that,
21 no.

22 Q Did you ever ask of anyone whether he should be
23 consulted in regard to this matter?

24 A No.

25 Q On the -- on the initial trip to Little Rock, did

1 you have discussion with anyone concerning the prior course of
2 negotiations with Mr. Hale's attorney?

3 A Yes.

4 Q And did someone apprise you, generally speaking, of
5 the position of the Little Rock U.S. Attorney's Office
6 regarding what would be an acceptable plea arrangement with
7 Mr. Hale?

8 A Yes.

9 Q Okay. Did anyone above you in the Department of
10 Justice place any restrictions on your ability to arrive at
11 different terms with Mr. Hale, if you decided that would be an
12 appropriate course of action?

13 A No.

14 Q Subsequent to your trip to Little Rock, did there
15 come a time when you went to Kansas City in connection with
16 this matter?

17 A Yes.

18 Q Okay. On that trip, were you accompanied by either
19 Mr. Bostwick or Mr. Nixon?

20 A No.

21 Q Okay. And your purpose of going to Kansas City was
22 what?

23 A To make arrangements with the RTC for the RTC to
24 make available -- to make available to the FBI records
25 regarding the Madison Guaranty Savings and Loan investigation.

1 Q Okay. During the meeting in Kansas City, did you
2 say to anyone at any point something, in words or
3 substance -- I'll note for the record that the witness is
4 starting to smile; I think he anticipates the question -- that
5 people wouldn't be happy if this went -- would be happy if
6 this went away or wouldn't be unhappy if it went away, or
7 something along those lines? I think you know what I'm trying
8 to get at..

9 A I know exactly what you're getting at. Yes. I had
10 a discussion with Richard Iorio, who was the -- I think he was
11 like the Chief of Investigations for the RTC in the Kansas
12 City district. Or, you know, that whole area.

13 And best of my recollection, the way this whole thing
14 came about was Mr. Iorio had voiced some criticism of the
15 United States Attorney's Office in Little Rock regarding the
16 not pursuing the first referral. ~~This is the September, 1992~~
17 referral. And I stopped -- well, I didn't stop him. But when
18 he completed telling me that, I told Mr. Iorio that the
19 decision not to pursue that prosecution had been approved at
20 the highest levels of the Criminal Division in the Department
21 of Justice. And I probably used words to the effect they
22 wouldn't have -- they wouldn't be unhappy if the thing went
23 away.

24 Q Okay. Had -- had you seen any document that
25 contained a statement similar to that effect, or what was the

1 source of your particular language?

2 A At that time, at that time I can't say for certain.
3 My best recollection is I had not yet seen any document to
4 that effect. But I had learned from Paula Casey when I had
5 initially met with her that there had been an earlier referral
6 and she had told me that she received a memo with Jack -- you
7 know, reporting to have originated from Jack Keating,
8 basically advising her or her office that, you know, if the
9 U.S. Attorney's Office decided to decline the case, that they
10 wouldn't have any problem with it. I mean I was aware of that
11 at the time that I made that statement to Iorio.

12 Q Okay. Did Ms. Casey discuss that memo in connection
13 with these generalized statements she was making of
14 unhappiness with her treatment by people at the Department?

15 A Yeah.

16 Q The conversation with Iorio, was it just the two of
17 you or was it as part of a larger group?

18 A I don't remember. I just -- I don't, I just don't
19 remember.

20 Q Okay. And you were intending to refer specifically
21 to that first referral?

22 A Right.

23 Q And your comments, you did not mean to apply to the
24 nine subsequent referrals?

25 A Absolutely, right.

1 Q Okay. I just want to quickly go through a few
2 documents.

3 A Sure.

4 Q I don't think this will take too long.

5 A I'm at your disposal.

6 Q First, I'm going to show you a document produced by
7 the Department bearing a Bates stamp number 004451. It's a
8 single page of handwritten notes. Just take a look at that
9 for yourself for a second. And my first question will be if
10 you can identify this single page for the record.

11 A Yes. That is my handwriting.

12 Q And can you -- can you read what appears on the
13 section that has not been redacted?

14 A Yes. It says pre-election referral, re, C.K. slash
15 kiting. U.S.A., dash, not going to pursue, dash, just B.S.
16 Then recused.

17 Q Okay?

18 A That's what it says.

19 Q And is it fair to say that B.S. stands for a common
20 swear word?

21 A Yes, it is fair to say that.

22 Q Fine. Can you just briefly describe the
23 circumstances in which this document was prepared by yourself?

24 A Yes. This is part of the notes that I made at the
25 meeting with Allen Carver, Dwight Bostwick, John Arterberry,

1 in September of 1993.

2 Q Are you familiar with an individual named Deborah or
3 Deb Smith?

4 A Yes.

5 Q Okay. Can you just identify her very quickly?

6 A Deborah is now a supervising attorney in the
7 environmental -- Criminal Section of the Environmental
8 Division of the Department. This is a job that she recently
9 took.

10 Prior to that time, for about the past two and a half,
11 three years, she was the Director of the New England Bank
12 Fraud Task Force in Boston, which is part of the Fraud
13 Section. Prior to that time, Deborah was a -- I believe her
14 title was senior litigation counsel in the Fraud Section in
15 Washington.

16 Q Did Ms. Smith have to be consulted regarding the
17 composition of your prosecution team?

18 A No.

19 Q At that time in November of 1993, to your knowledge,
20 were you to be assigned to the New England Bank Fraud Task
21 Force?

22 A No.

23 Q Okay.

24 A Deborah had -- by November, '93, Deborah Smith was
25 already well ensconced as the director of the task force. I

1 mean she was actually up in Boston at that time.

2 Q Okay. Showing you now a document Bates stamped
3 004308, again, it's a single page of some handwritten notes.
4 Do you recognize the handwriting --

5 A Yes.

6 Q -- that appears on this document?

7 A That's my handwriting.

8 Q Okay. Can you just go through everything that
9 appears and read whatever you can as it appears there?

10 A Sure. It says, "Stern, U.S.A. will recuse Monday.
11 No special counsel, dash, no basis on current info. Recusal
12 on Hale, self and office. Hale, dash, trial. Frustrated with
13 RTC responsiveness. Using omnibus subpoena. Go Tuesday, meet
14 with U.S.A. for transition".

15 Q Okay. And the Stern who's referred to in these
16 notes, which one would that have been?

17 A That would be Carl Stern.

18 Q And can you just identify him, please?

19 A Carl Stern is the -- I don't know what his real
20 title, they had some title for him. Basically he's -- he's
21 our PR guy, okay. You know, he runs the Public Information
22 Office over at the Department of Justice.

23 Q Okay. Can you tell either from looking at this or
24 from your independent memory whether the information was being
25 conveyed to you or from you to him?

1 A This would have been information conveyed to me, and
2 not necessarily from Carl Stern. My best recollection is this
3 is -- this is information which was conveyed to me by Jerry
4 McDowell.

5 Q Okay.

6 A For some reason, Stern's name is mentioned.

7 Q It being in connection with a possible press
8 release?

9 A Yeah, that's exactly what I'm guessing here, is that
10 Stern may have spoken with McDowell, okay. Because I mean
11 there's some reason I put Stern's name down there. But I
12 never had the impression -- I don't get the impression in
13 reading this that Stern was the source of the information that
14 the U.S. attorney was going to recuse on Monday.

15 Q Okay.

16 A I got that information ~~I got from McDowell.~~

17 Q Okay. And the reference to a Special Counsel?

18 A Right, this -- go ahead.

19 Q Is that a reference to the, I guess, corollary of
20 what would now be an independent counsel?

21 A Yeah, I think that's probably a fair assessment.
22 See, at the time, there was no independent counsel statute on
23 the books. It had expired and Congress had not yet passed a
24 new one.

25 Q Okay. How had that issue come to your attention,

1 that it was even under consideration?

2 A Once again, I would have to say from what Jerry
3 McDowell conveyed to me. I wasn't aware that it was under
4 consideration or I don't think I was aware that it was under
5 consideration. But, you know, reading this, no special
6 counsel, with a notation next to that, no basis on current
7 information.

8 You know, I think at that time there was a real lack of
9 information, okay. I mean, you know, I think that's probably
10 what leads -- or supports the statement or the observation by
11 McDowell or others that, you know, there was no factual basis
12 at that time to suggest that, you know, a special counsel be
13 appointed as opposed to an employee of the Department.

14 Q Did you have any conversations in this time period,
15 meaning September through October and November of 1993,
16 concerning what circumstances might warrant a further look at
17 that issue?

18 A Yeah, I think we did. Let me -- I think the way
19 this arose is that it -- you know, at some point in time, the
20 media, the print, particularly the print media, were running
21 articles, editorials, saying, you know, better appoint a
22 special counsel. There were rumors that Congress was going to
23 enact a new special counsel law, like right after the first of
24 the year, which would have been in early 19 -- because I think
25 Congress may have gone into recess for a while or something.

1 You know, I mean I realize I'm getting a little bit out of the
2 time frame that you're focusing on, but I'm trying to --

3 Q Sure.

4 A -- respond to the substance of the question. Yeah,
5 I mean because I always -- not always, but, you know, once the
6 media started running these articles and editorials, I felt
7 like I was racing against the clock, almost, so to speak, you
8 know, in terms of how much time we were going to have to
9 conduct whatever investigation we could conduct before an
10 Independent Counsel law was enacted. Because my understanding
11 from, you know, the prior independent counsel law, is that
12 once the independent counsel law goes into effect, we would
13 not be able to use grand jury. Because that -- apparently
14 under the old law, if there was any consideration being given
15 by the Attorney General or the Department, you know, whoever
16 would make the determination --

17 Q You mean the initial assessment of whether there
18 were credible allegations?

19 A Right, that that would cut us off from subpoenaing
20 anything. So that was the real focus of my concern about the
21 Independent Counsel issue.

22 Q Okay.

23 A That was it.

24 Q The fact that you have Hale, dash, trial,
25 highlighted by encircling it, I'll say --

1 A Yeah. I can --

2 Q Can you explain that a little bit?

3 A Yeah. Go back up here. It says recusal on Hale.

4 Q Which appears two lines above.

5 A Right, and I underscored the word, "Hale," there.

6 Then I underscored twice, self and office. Because there were
7 a lot of questions, you know, in my mind and in the minds of
8 Carver and I'm sure Jerry McDowell. All right, Paula Casey is
9 recusing. All right.

10 Is she going to recuse on the Hale case or is she just
11 going to recuse on the RTC referrals? Okay. In other words,
12 there are theoretically, more than theoretically, there could
13 have been -- one of the scenarios that we were, you know, we
14 could have been faced with, is that Paula Casey says, all
15 right, I'm recusing on the RTC referrals, but I'm going to
16 keep the Hale case.

17 You know, and I remember thinking to myself, that's going
18 to be a real pickle if that happens. The next question is,
19 you know, another scenario we were working with is, well, is
20 Paula Casey going to just recuse herself, but not the office?
21 All right. Then where -- you know, once again, where do we
22 fit in here?

23 Are we going to be working one or both of these cases
24 with other members of the staff in the U.S. Attorney's
25 Office? And if that's the case, you know, who runs it?

1 Okay. That answered that question.

2 Next, Hale, dash, trial. All that means to me is I
3 concluded we, me, was going to have to try the David Hale
4 case. And I remember thinking to myself, when's the trial?
5 You know, I mean, you know --

6 Q First question a person would ask.

7 A Right, where's the indictment? You know, things
8 like that. Okay. Frustrated with RTC responsaiveness, this
9 has got to be --

10 Q The subpoena issue?

11 A Yeah.

12 Q The subpoena compliance issue?

13 A Right, yeah. And then, you know, on the subpoena
14 saying, you know, kind of tied together.

15 Q Sure, okay. Next, I'm going to show you 002262.
16 This is an E-mail message that appears to have been sent by
17 Mr. Arterberry. It bears a date of November 9th, 1993, at
18 6:12 p.m.

19 A Okay.

20 Q Okay. What I'd like to focus your attention on is
21 the third to last highlighted point, quote, "Mackay has had
22 initial meeting with Hale's counsel, who has proposed a
23 pretrial disposition." And the first question is, was that,
24 in fact, the case?

25 A Yeah. All right. Best of my recollection, at this

1 time, I had been introduced to Hale's attorney by Paula
2 Casey. Shook hands and I mean, you know, it was a 10-second
3 meeting.

4 Q Okay. It wasn't a substantive meeting?

5 A No, no, no. And where it says here, you know, who
6 has proposed a pretrial disposition, at that time Hale's
7 counsel had proposed nothing to me. He may have made some
8 comment, well, you know, let's maybe work this thing out, but
9 I don't even think he did. It really was just a --

10 Q Okay.

11 A -- meeting, introductory meeting. And I may have --
12 I mean I was aware that there had been previous discussions
13 between Hale's lawyer and people in the U.S. Attorney's Office
14 in Little Rock regarding a pretrial disposition, but that's
15 all I was aware of. I mean I can tell you this, that I did
16 not have any discussion with Hale's counsel on that occasion
17 regarding any kind of a disposition for dealing with the case.

18 Q Okay. I'm going to show you now some handwritten
19 notes that bear the consecutive Bates stamp numbers 000482
20 through 000486, a collection of pages of handwritten notes.

21 A I have to tell you, I have difficulty in reading
22 some of this. These are not my notes.

23 Q I understand that.

24 A Okay.

25 Q If you want, you can take the opportunity to go

1 through them completely. There are only certain portions that
2 I intend to --

3 A Well, why don't you just, if it's all right with
4 you, go to, you know, the portions you're interested in. I'll
5 try to decipher them.

6 Q Okay. Well, I may, in fact, do some of that myself
7 and just ask you if you recall discussing certain things.

8 A Sure.

9 Q It appears from the heading, "telcon, slash, Don
10 Mackay, 11, dash, 9, '93," and from the fact that these notes
11 bear at the bottom right, "JDA 000172," it's my understanding
12 these are notes prepared by Mr. Arterberry.

13 A Certainly looks like his writing.

14 Q And it appears to be from a conversation had with
15 you on November 9th of 1993. On the first page, at the top it
16 appears that there's some discussion of the press release
17 that's going to be involved in this matter. And do you recall
18 if there was any discussion that you had regarding whether
19 certain individuals or certain subjects should be included or
20 excluded from the press release?

21 A No, I had absolutely no input into that at all.

22 Mr. Sgro. Tom, just for the record, with respect to the
23 press release, it was a press release concerning --

24 Mr. Clark. Yeah, the press release concerning the
25 recusal of Ms. Casey's office and the fact that you and

1 Mr. Bostwick and Nixon were going to be taking over the
2 investigation. Just so that we're clear.

3 The Witness. Right, I understood your question.

4 Mr. Sgro. I just wanted to make it clear for the
5 record.

6 BY MR. CLARK:

7 Q That's quite all right.

8 Was Ms. Casey somewhat concerned about the press release
9 going out?

10 A She was anxious to see that the press release went
11 out.

12 Q Okay. Do you know if she was involved in any
13 discussions concerning the contents of the press release?

14 A Not to my knowledge.

15 Q If you go to the second page, 000483, towards the
16 center it says -- what it appears to me to read is,
17 "indictment, need dictionary to read," then five pages, four
18 accounts, parentheses, 371, comma, SBA. Did you have any
19 discussion with Mr. Arterberry on that date that would be --

20 A Yeah. Yes.

21 Q -- on that subject?

22 A Pardon me?

23 Q On the subject.

24 A Yes, yes. I certainly must have. See, we hadn't
25 seen the Hale indictment. I mean I got the Hale indictment

1 while I was in Little Rock, got a copy of it. And I remember
2 faxing -- I wanted to fax it to Carver or Arterberry. So one
3 of the secretaries in the U.S. Attorney's Office said that
4 they would do that.

5 Well, I got a call back a little later and said we didn't
6 get it. Well, I guess by that time they were ready to close
7 the office or something, so we had to refax it the following
8 day, as I recall. I don't know whether there was a problem
9 with the quality of the fax or just what. All right. Yeah,
10 it was a four-count indictment, 371 is the conspiracy statute,
11 SBA, basically charging SBA fraud.

12 Q Regarding the "need dictionary to read," do you
13 recall making a comment to that effect?

14 A No, no, I don't. No, I don't. It's -- it looks
15 like dictionary. I mean, you know, I may have made a comment
16 to John Arterberry that I had seen better drafted indictments,
17 you know, something to that effect. It was not -- let me put
18 it this way. I wouldn't have been -- I wouldn't have drafted
19 it the way it had been drafted.

20 Q Sure. And that's -- that's, I mean, there are 4,800
21 prosecutors --

22 A Right, exactly.

23 Q -- in the United States, and presented with the same
24 facts, many would draft indictments differently, charge
25 different crimes.

1 A Right, right.

2 Q Sure. Okay. Then immediately underneath that,
3 "U.S.A. prepared memo to D, period, M, period, at his
4 request," and then it lists a series of things. I'll just say
5 generally, it appears to me that these might be terms that
6 might be included in a cooperation agreement between a
7 defendant and the government. Plead to two-year felony, get 5
8 K 1/1 motion, no further charges, things like that.

9 Do you recall discussing that with Ms. Casey?

10 A Yeah, yes, yeah. Basically, Paula Casey discussed
11 with me, you know, the history of discussions or negotiations,
12 whatever you want to call it, that either she or her office
13 had with Hale's lawyer. And my recollection is that Paula
14 Casey herself wasn't that directly involved. It was a first
15 assistant in her office who had done a lot of this. But I
16 mean this was just pretty much -- ~~I remember asking~~ Paula, you
17 know, if she would do a little memo to me, basically
18 summarizing all this.

19 Q Sure. Because you wanted to have an appreciation --

20 A Right.

21 Q -- of what had happened before you --

22 A Right.

23 Q -- became involved?

24 A Right.

25 Q Number five appears to me to read, "Hale not

1 R-E-S-T-R in congressional inquiry if requested." It seems to
2 me it's either restricted or restrained. Do you recall
3 discussion of that subject?

4 A Yeah, yeah, yeah. I mean other than what's here,
5 there was no real discussion of it. Basically, Hale wanted to
6 be free to discuss with congressional, you know, such as
7 yourself or any Member of the Congress, any information that
8 he was aware of.

9 Q Okay. Did any one of the people to whom you were
10 reporting in main Justice ever discuss with you whether that
11 was either appropriate or inappropriate to include in any sort
12 of agreement with Mr. Hale?

13 A I don't -- best of my recollection, no. We didn't
14 discuss that.

15 Q Okay. If you go to page 000465, towards the bottom,
16 it appears to have McDougal, dash, Fletcher says is a manic
17 depressive. That's the way I read it.

18 A That's right.

19 Q First of all, could you just briefly identify
20 Fletcher?

21 A Fletcher Jackson is an Assistant United States
22 Attorney in Little Rock. He was the attorney to whom the Hale
23 case had been assigned. He was the attorney who indicted the
24 Hale case. And keep in mind, number one, McDougal was not a
25 defendant in the Hale case. McDougal had nothing to do with

1 the Hale case. I'm guessing at this a bit, but I'm probably
2 right. You know, in the discussions I had with Fletcher
3 Jackson regarding the Hale case, I know that we also talked
4 about Madison Guaranty, and the nine referrals, because I
5 believe Fletcher Jackson was also the AUSA in the office who
6 had -- I mean I think he had something to do with those, you
7 know, I mean just a little fuzzy in my mind. And he had told
8 me that a couple years before that, I think it was like in
9 1989 or 1990, there had been a bank fraud prosecution against
10 James McDougal which resulted in an acquittal.

11 And one of the things that Fletcher was telling me about
12 that case was that, you know, some of the antics that James
13 McDougal as a defendant was staging in the courtroom. And
14 mentioned in that context that the guy is a manic depressive.
15 That's my best recollection.

16 Q Okay. All right. Let's ~~move on.~~ Showing you now
17 two pages Bates stamped 000352 and 353. These are two pages
18 of handwritten notes. I'll represent that it's my
19 understanding they're Mr. Arterberry's notes.

20 A Yes, it looks to be his handwriting to me.

21 Q Okay. And what I'd refer your attention to
22 specifically is the first page. I'll note that it appears to
23 read at the top, "telcon," which I interpret to be telephone
24 conference, "with Don Mackay," and bears what appears to be a
25 date of 12/1/93.

1 It has a series of enumerated points. One, met with
2 looks to be chief judge, very pleasant. Then number three, it
3 has call U.S.A. and read U.S.A. in re recusal. Do you recall
4 the discussion on that subject?

5 A Yes. I mean I recall it from these.

6 Q Sure.

7 A There is a provision in the United States Attorney's
8 Manual which instructs United States attorneys that when they
9 recuse from a case, that they are to submit a written letter
10 to the chief judge of the district advising them that they
11 have recused on a certain case. And what I -- Paula Casey was
12 not aware of that. Or I mean, let me say this, they didn't
13 know whether Paula Casey was aware of it, whether she had done
14 it. So I mentioned it to Paula Casey. And she sent a letter.

15 Q Okay. How did it come to your consciousness that
16 you should mention this to her? ~~I mean was there anything~~
17 that prompted --

18 A It was either Carver or Arterberry mentioned it to
19 me. It might have been Jerry McDowell. Somebody did.

20 Q Okay. Can you tell from looking at Mr. Arterberry's
21 notes whether this is something that he's stating you're going
22 to do as opposed to something he's going to do?

23 A Yeah.

24 Q Okay. I'm going to show you two pages of notes,
25 004339 and 004340. Ask you to just look at those for a

1 second. And my first question will be if you can identify the
2 author.

3 A Yes, that's my writing.

4 Q Okay. Just give me one second.

5 A Sure.

6 Q Now, the copy might be kind of hard to decipher, but
7 I'll represent that towards the top on the left-hand side of
8 the best copy we have, it appears that there's a date,
9 12/28 --

10 A Right.

11 Q -- '93.

12 A Yes.

13 Q And just -- just if you would, I'd ask you if you
14 could read the notes you made underneath the line that has
15 arrows at each end. And I recognize that certain portions
16 have been marked as redacted, and ~~then it appears~~ on the front
17 of 004339 the copy has been cut off.

18 A Okay. All right. "Meeting Tuesday, nine, FBI
19 office." Next notation, "4:35," it would indicate to me this
20 is 4:30 in the afternoon. "C F," meaning call from, Kendall,
21 and redacted. Intends to cover, understands scope of subpoena
22 covers, and then it's redacted. Can't produce this week,
23 dash, has to review all files.

24 Next notation is three, quote, "miracle", close quote,
25 boxes. Then there's a redaction. Next is, but will turn over

1 everything. Next, expects will be close to 1/18 return date,
2 dash, but will have better handle by early next week. And
3 then --

4 Q Then there's some portion that's cut off. The
5 second page --

6 A Second page, R-E-Q, it's either requests or requires
7 subpoenas because of fear of leaks. Represents newspaper
8 reporters, wants to maintain contact.

9 Q Okay. And the general topic that these notes cover
10 concern the subpoena for documents from Mr. and Mrs. Clinton;
11 is that fair to say?

12 A Yes.

13 Q Okay. To your knowledge were there any limitations
14 in the use of any documents obtained from either Mr. Kendall
15 or Jim Hamilton that were placed on the documents that were
16 more restrictive than the Department would otherwise have? If
17 you understand that question.

18 A I think I know what you're trying to ask. And the
19 answer is, no.

20 Q Okay. Showing you now a single page, it's an E-mail
21 apparently, and it's marked FBI 0002185. It's from Thomas
22 Kubic, K-U-B-I-C, to Verinder, or Verinder, V-E-R-I-N-D-E-R,
23 bears a date of Saturday, January 8th, 1994, at 2:13 p.m.
24 What I'd ask you, Mr. Mackay, to look specifically at what's
25 marked as number five on a list of different subjects.

1 A Yes.

2 Q Okay. Just give me one second.

3 A Sure.

4 Q Topic number five says, "DOJ Mackay," and they
5 misspelled your name, "... anticipates requesting and
6 obtaining an additional two DOJ attorneys to assist at Little
7 Rock." And my questions are going to be hopefully very brief
8 and specific.

9 Is that representation an accurate reflection of
10 statements that you had made or thought you had expressed --

11 A Yes.

12 Q -- at about that time?

13 A Yes.

14 Q Okay. Was your thinking that you needed persons,
15 two more persons from fraud, two from public integrity, one
16 from both, or did you have thoughts like that or was it just
17 we need two bodies?

18 A It was more specific than we need two bodies. I
19 would -- I have to say, in all fairness, that at that time I
20 was thinking of Fraud Section attorneys. Public Integrity
21 never entered my mind.

22 Q Okay. At this point, January 8th, did you still
23 have that February trial date for the Hale matter?

24 A I don't remember. I think, yeah, at that time we
25 still had the February trial date, I'm pretty sure. It later

1 on got kicked.

2 Q And by kicked, you mean that it was adjourned?

3 A Put over, yes. My Midwest slang, I'm sorry.

4 Q That's quite all right, we just want to make sure
5 that people who may not be from the area --

6 A Right, right.

7 Q -- and who may read this at some point understand
8 it. And were they -- were the two persons who you were
9 thinking of requesting, were they going to help you
10 specifically with the trial or was it the overall
11 investigation?

12 A What -- what I was hoping for was one for each.

13 Q Okay.

14 A Okay. I mean, you know, in a perfect world.

15 Q Fair enough. This is the -- this is the last
16 document I'm going to ask you about. ~~This is a document, a~~
17 memorandum from Dana Gillis, G-I-L-L-I-S, an FBI agent, to
18 ADIC, WMFO. I interpret that to be assistant director in
19 charge, Washington metropolitan field office of the FBI. And
20 it bears a Bates stamp number, FBI 00002662. And I'd refer
21 your attention specifically to the third paragraph.

22 A Okay.

23 Q Okay. In that third paragraph, Mackay, it reads,
24 referring to you, advised he will not be attending the
25 production session, which refers to the turning over the

1 documents by Mr. Kendall, pursuant to the subpoena, based on
2 decision of DOJ.

3 A Right.

4 Q Can you just tell me, if you know, who would be
5 encompassed by DOJ in that sentence?

6 A Yeah. I had discussed this with Allen Carver, or
7 actually Allen had discussed it with me I guess is probably a
8 better way to put it. Because earlier on, it was contemplated
9 that I would accompany the agents picking up documents at
10 Kendall's office. And the purpose of my doing that was to
11 clarify with David Kendall some of the -- I guess some
12 questions that had arisen concerning the completeness of the
13 production, okay. And the date here is 1/13.

14 I think it -- by this point in time, there had been a
15 determination by the Attorney General that a special
16 prosecutor was going to be appointed. ~~And so obviously before~~
17 Dana Gillis wrote this memo on the 13th, we had talked and I
18 had told him that I had basically been instructed -- once
19 again, I want to say it was Allen Carver; it might have been
20 Allen Carver and Jerry McDowell -- that I shouldn't -- you
21 know, that I would not be attending the meeting. I can't
22 remember why they decided that, though.

23 Q Okay.

24 A I just -- you know, there was a reason for it. At
25 the time it made sense. But I just can't think what it was

1 now.

2 Q Then the next sentence, no questions are to be asked
3 of Kendall --

4 A Right.

5 Q -- by evidence acquisition agents. Was that
6 something that you instructed is it, Mr. Gillis?

7 A Yeah, yeah, Dana, yeah. Great agent, too, nice
8 guy. Yeah, all I was doing was basically relaying to Dana
9 Gillis what I had been told by -- once again, I want to say
10 Carver. In other words, two things: Mackay, you're not going
11 to go; and tell the agents when they go, just to pick up the
12 documents and not ask questions.

13 Q Okay. And just to be clear, you were giving
14 instructions regarding questions on the topic of --

15 A Completeness of production.

16 Q Okay. Just give me one ~~second, please.~~ Just a very
17 brief area.

18 A Sure.

19 Q Ms. Lewis from the RTC, did anyone to whom you were
20 reporting in Justice ever speak to you regarding the issue
21 whether you should discuss her referrals with her?

22 A No.

23 Q Did -- when you went to Kansas City towards the end
24 of November in 1993, were you aware at that time that
25 Ms. Lewis had been relieved by the RTC of responsibility for

1 the investigation?

2 A I was informed of that that morning by Richard
3 Iorio.

4 Q Okay.

5 A Before I arrived in Kansas City at Iorio's office, I
6 was not aware of that.

7 Q Did -- did Mr. Iorio state to you that you could
8 communicate with him if you had questions about the referrals?

9 A Oh, I'm sure he did.

10 Q Okay.

11 A I think what he actually suggested in that respect
12 was that we would -- there was a fellow named Mike Sharon or
13 Karen, who was one of their investigators, you know. In other
14 words, he'd be our point of contact rather than Iorio. Iorio
15 never said anything to lead me to believe that I couldn't call
16 him if I wanted to.

17 Mr. Clark. Okay. I have nothing further. Thanks very
18 much.

19 The Witness. Thank you.

20 Ms. Garcia. Can we go off the record?

21 [Discussion had off the record.]

22 [Whereupon, at 12:30 p.m., the committee was recessed, to
23 reconvene this same day.]
24
25

1 RPTS WATT

2 DCMN KRISTOFFERSEN

3 [AFTERNOON SESSION - 12:55 p.m.]

4 EXAMINATION BY MS. GARCIA:

5 Q Mr. Mackay, my name's Angie Garcia. I'm Minority
6 professional staff member and just like to thank you for
7 coming here today. I just wanted to make clear for the
8 record, you are currently not -- currently with the Justice
9 Department as a career civil servant?

10 A Yes.

11 Q Is that correct?

12 A That's correct.

13 Q You indicated that you've tried two cases during
14 your tenure with the Justice Department Fraud Section. One
15 was in Atlanta and I believe the other in New Hampshire. You
16 indicated, in discussing those two cases, that you had picked
17 them up after the indictment and hadn't conducted the
18 pre-indictment investigation.

19 A Yes.

20 Q In other cases that haven't gone to trial, have you
21 conducted pre-indictment investigations?

22 A I'm working on one as we speak, and actually I have
23 tried three cases. But maybe I misunderstood. The time frame
24 was, before I was assigned to Madison I only had two. Since
25 that, I've tried another case in New Orleans, which is a bank

1 fraud case, and I was involved in that case, believe it or
2 not, before the indictment.

3 Q Okay. Prior to -- first of all, let me clarify. In
4 the Madison case, did you conduct pre-indictment -- a
5 pre-indictment investigation?

6 A Yes.

7 Q Was that the first pre-indictment investigation you
8 conducted with the Department of Justice Fraud Section?

9 A No. I was working on other pre-indictment
10 investigations before that.

11 Q Okay, thank you. Do you recall how many other
12 investigations?

13 A Three.

14 Q Okay. Later in your testimony, you discussed the
15 fact that Mr. Bostwick and Mr. Nixon were from the Criminal
16 Section or the Fraud Section.

17 A Yes.

18 Q And there was no member in your -- in the initial
19 trial team from the Public Integrity Section?

20 A That's right.

21 Q In your own opinion, do you believe that someone
22 from the Public Integrity Section should have been included in
23 the first -- in the initial trial team?

24 A I -- I don't think it was necessary.

25 Q Why not?

1 A Well, the focus of the allegations in the referrals
2 were bank fraud violations. There was no suggestion, that I
3 was aware of, that a public official had corruptly used his or
4 her public office for personal gain.

5 You know, I mean it's my understanding at least that, you
6 know, the Public Integrity Section would become involved if
7 there were suggestions that you had a public official
8 committing acts in office which were corrupt or alleged to be
9 corrupt.

10 I mean there wasn't any real allegation that any public
11 official was using -- misusing or abusing the public office in
12 the context of these allegations.

13 Q The allegation that pertained to President Clinton's
14 campaign fund, I believe it was his gubernatorial campaign
15 fund of 1985, was that an allegation that involved bank
16 fraud -- or was it something that ~~the Public Integrity Section~~
17 would have jurisdiction over?

18 A As I recall reading the referrals, it was all in the
19 context of bank fraud violations and that bank funds were
20 being improperly diverted to political -- to political
21 campaigns.

22 Q Okay. Later in your testimony you also discussed a
23 meeting that you had with members of the RTC Kansas City
24 office staff. Mr. Iorio was -- attended that meeting, and you
25 discussed a conversation that occurred between the both of

1 you. You indicated that you had told Mr. Iorio that the
2 Department would not be upset if the investigation of Madison
3 went away; is that --

4 A No.

5 Q Can you just --

6 A Yes, I will try to clarify that.

7 Q Okay.

8 A We were at that time addressing the very narrow
9 issue of the handling of the September 1992 referral; that was
10 all; and I simply indicated to Mr. Iorio that I had -- it was
11 my understanding that the determination by the United States
12 attorney in Little Rock to not pursue a prosecution on the
13 basis of that September 1992 referral had been concurred in by
14 the highest officials in the Criminal Division at the
15 Department of Justice. That was essentially it. And I may
16 have used the terminology that ~~they wouldn't be unhappy~~ if it
17 went away, referring again to the September 1992 referral.

18 Q Thanks for clarifying that. Let me also clarify
19 where you learned that information from. Was that from
20 Ms. Casey, as you indicated --

21 A Yes.

22 Q -- earlier today, or from what has been referred to
23 by other witnesses before as a yellow sticker? Was there a
24 yellow sticker on the criminal referral of 1992?

25 A I learned that from Ms. Casey. There was no yellow

1 sticker anywhere, okay. And I don't know why or how Richard
2 Iorio came up with that. The only thing I can guess at --
3 and this is strictly a guess on my part -- that when I made
4 the comment to Iorio, you know, that this thing had been
5 approved, you know, it had been blessed at the highest levels
6 of the Criminal Division. He or someone who may have been
7 there at the time jokingly said, oh, yeah, there was a yellow
8 sticky on the file, ha-ha-ha.

9 That's my best guess as to how Iorio comes up with this
10 version that, you know, there was a yellow sticky saying make
11 this thing go away. I mean it didn't happen.

12 Q Okay. Let me refer you to a document you reviewed
13 in your earlier discussion with Mr. Clark. The Bates numbers
14 are 000482 through 000486.

15 A Are we looking at Arterberry's notes here?

16 Q Yes, I believe they're John Arterberry's handwritten
17 notes.

18 A Oh, I'm looking at the wrong numbers on here, I'm
19 sorry.

20 Q If you could refer to page 2 of his notes.

21 A Okay.

22 Q You discussed earlier how the second half of the
23 notes refer to what could have been a cooperation agreement
24 that was being negotiated or discussed about within the
25 Department.

1 A No, this was by Paula Casey.

2 Q Okay.

3 A This was not the Department I'm talking about here.

4 This is these five items recited here under the caption

5 "U.S.A. prepared memo to D.M. at his request." Then they

6 list five separate items. I had asked Paula Casey to

7 memorialize for me in written form what she had previously

8 conveyed to me verbally, and that's these five things.

9 Q Okay. I'm sorry, I --

10 Mr. Clark. Just so the record's clear, I think if you
11 look at the next page of the notes, it appears that there is a
12 sixth term.

13 The Witness. Yes, right.

14 Mr. Clark. That may not have been necessarily
15 incorporated in an agreement, but was sort of an
16 understanding.

17 The Witness. That's right.

18 EXAMINATION BY MS. GARCIA:

19 Q Okay.

20 A See, we're not talking -- maybe I misled you. We're
21 not talking here about anything that necessarily had been in
22 written form in the past. What I'm talking about here is
23 essentially a universe, a combination, if you will.

24 I'm saying to Paula Casey, Paula, would you memorialize
25 for me what your recollection is and what your understanding

1 is as to discussions you've had or other members of your staff
2 have had with Randy Coleman, who is David Hale's lawyer. And
3 that's these six items.

4 But what I'm suggesting to you is that if you were -- for
5 instance, if you had access to all of the documents in Paula
6 Casey's office, you may not find any document, any letter, any
7 correspondence between that office and Randy Coleman
8 containing, for instance, reference to item number 6 that
9 Steve Irons must be included.

10 And I -- I was told this and I said to Paula, I said,
11 hey, write it out for me. And that's what this refers to.

12 Q Okay. And you were communicating this to John
13 Arterberry --

14 A Right.

15 Q -- and the Department, just to notify him of the
16 discussions that occurred?

17 A Exactly.

18 Q Thanks. Number 5 on the list is Hale. I believe it
19 says Hale cuts restrict --

20 A Well, I mean --

21 Q Hale --

22 A It's a little difficult to read the writing, but I
23 know what -- I do know from my recollection the information I
24 was attempting to convey to John Arterberry, and that was that
25 one of the matters that was brought up by Randy Coleman on

1 behalf of his client, David Hale, was that if they were able
2 to enter into any kind of a plea agreement or any kind of a
3 disposition of the matter, that his client, David Hale, would
4 be free to come to a congressional committee and tell that
5 committee of the Congress everything he knew.

6 Q Did Ms. Casey indicate to you whether Mr. Hale or
7 his lawyer had ever had any prior communications with Congress
8 regarding the SBA matter?

9 A I don't think she did. I mean I'm aware of the fact
10 that there were communications between Mr. Hale's lawyer and
11 members of this committee or the House Banking Committee, but
12 I don't believe that I learned that from Mrs. Casey.

13 Q Okay. I'm going to take you a little bit out of
14 order here and go back to your meeting with Mr. Iorio and the
15 rest of the RTC staff.

16 You indicated that Mr. Iorio ~~had informed you~~ that Jean
17 Lewis was taken off the investigation of Madison Guaranty, the
18 RTC's investigation, as you specified. Did he ever indicate
19 to you that if you did need to talk to Ms. Lewis, you could
20 contact her at your convenience?

21 A I don't specifically recall him saying that.
22 However, I certainly had the impression that if I felt it was
23 necessary for me or the FBI agents or anybody working on this
24 investigation to contact Jean Lewis, that we would be able to
25 do so, and I did not anticipate from anything that Mr. Iorio

1 or anyone else said at that time that there would be any
2 attempt by anyone to prevent us from talking to Ms. Lewis.

3 Q Did you ever contact Ms. Lewis?

4 A No.

5 Q Did any of your staff --

6 A No.

7 Q -- ever contact her?

8 A No.

9 Q In the course of your work on Madison Guaranty,
10 beginning I believe in September of '93 through January of
11 1994, did anyone in the Department ever direct you to
12 investigate the matter differently or -- different from
13 standard procedure?

14 A No.

15 Q To the best of your knowledge, did anyone in the
16 Department communicate with -- who ~~were communicate~~ -- strike
17 that.

18 To the best of your knowledge, did anyone in the
19 Department who you were communicating with have -- relay the
20 contents of your communications to Mr. Hubbell, Web Hubbell?

21 A No.

22 Q Did you ever have any communications with any member
23 of the White House staff regarding your -- the content of your
24 investigation?

25 A No.

1 Ms. Garcia. I believe that's all the questions I have
2 for right now. Thank you.

3 Mr. Sgro. I'll pass for now. Do you have anything else?

4 EXAMINATION BY MR. CLARK:

5 Q There's just two things I want to clear up. I think
6 they'll be very brief. First, with regard to the matters in
7 Atlanta and in New Hampshire, just so the record's clear, can
8 you give us the results of the prosecutions?

9 A Yes. In the Atlanta case, we started out the trial
10 with two defendants in the courtroom. One of the defendants
11 was rule 29-ed out at the close of the Government's case. The
12 jury found the remaining defendant guilty on the most
13 difficult counts.

14 Q Okay.

15 A And not guilty on what I thought were the throwaway
16 accounts, okay.

17 Q Okay. Just so the record's clear, by rule 29, you
18 mean that the judge had made a determination at the conclusion
19 of the Government's case that there wasn't a prima facie case
20 established against that defendant, correct?

21 A Right, exactly.

22 Q So didn't go to the jury?

23 A Right, correct.

24 Q And then with regard to the New Hampshire case?

25 A New Hampshire case, all of the defendants were found

1 guilty. One of them was found guilty on the conspiracy and
2 some of the substantive counts. The jury was not able to
3 arrive at a verdict as to the other substantive counts against
4 one of the defendants. The other two defendants were found
5 guilty on all of the counts. We elected to not pursue a
6 retrial of the remaining undisposed counts against the one
7 defendant.

8 Q And just so that there's no question, that's a
9 decision that is not unusual for a prosecutor to make in
10 similar circumstances, is it?

11 A Yes.

12 Q Okay. The second thing, just very briefly: Did you
13 ever have any conversations with Mr. Coleman, Mr. Hale's
14 lawyer, during that period during which you had responsibility
15 for the case concerning a possible disposition? Just yes or
16 no.

17 A Yes.

18 Q One or more than one, do you think?

19 A More than one. Are you asking me on more than -- if
20 I had discussions with Coleman on more than one occasion?

21 Q Yes.

22 A Yes, the answer is yes.

23 Q Okay, fine. Did you form an opinion of his ability
24 to represent his client?

25 A Yes.

1 Q In your opinion, was Mr. Coleman someone who had had
2 a fair amount of experience in representing persons with
3 exposure to criminal culpability?

4 A Yes, I found Mr. Coleman to be a very competent
5 lawyer.

6 Mr. Clark. Okay. That's really about it.

7 Ms. Garcia. I have nothing further.

8 Mr. Sgro. I'm fine.

9 Mr. Clark. Thank you very much again, Mr. Mackay.

10 [Whereupon, at 1:15 p.m., the deposition was concluded.]
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U. S. Department of Justice
Criminal Division

Washington, D.C. 20530

November 7, 1995

Tom Clark
Senior Counsel
Investigations and Oversight
Committee on Banking and
Financial Services
U.S. House of Representatives
Washington, D.C. 20515-6050

Dear Mr. Clark:

The following errata are noted in the transcript of my deposition of Wednesday, September 20, 1995:

1. P. 2, line 12: delete "For Mr. Mackay" and replace with "On behalf of the Department of Justice"
2. P. 9, line 12: delete "and" between "State of Illinois" and "the Illinois Supreme Court" and replace with "in"
3. P. 11, line 18: delete "casings" and replace with "cases"
4. P. 12, line 4: delete the comma between "letter" and "fellow" and insert "to a"
5. P. 39, line 7: delete "reporting" and replace with "reported"
6. P. 39, line 7: delete "Keating" and replace with "Keeney"
7. P. 62, line 12: delete "Sharon" and replace with "Caron"

Sincerely,

A handwritten signature in cursive script, reading "Donald B. Mackay".

Donald B. Mackay
Deputy Chief, Fraud Section

cc: Joe Reilly
Robert Giuffra
Lance Cole

6TH STORY of Level 1 printed in FULL format.

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November 10, 1993, Wednesday, Final Edition

SECTION: FIRST SECTION; PAGE A1

LENGTH: 991 words

HEADLINE: U.S. Steps Up Investigations In Arkansas;
Justice Dept. Names 3 As Prosecution Team

SERIES: Occasional

BYLINE: Michael Isikoff, Susan Schmidt, Washington Post Staff Writers

BODY:

The Justice Department yesterday named a special three-member prosecution team to oversee politically sensitive investigations into a federally backed investment company and a failed Arkansas savings and loan that had ties to prominent figures in the state, including President Clinton.

The move came after U.S. Attorney Paula Casey formally recused herself and her office from any further involvement in the probes. After consulting with Deputy Attorney General Philip B. Heymann and his staff, acting criminal division chief John C. Keeney dispatched three career lawyers from the fraud section, headed by Donald B. Mackay, a former U.S. attorney in Illinois, to Little Rock to take over the investigations.

Casey, a Clinton appointee and volunteer in some of Clinton's gubernatorial campaigns, had resisted earlier requests that she recuse herself. But late last week, following news media reports about the probes, she informed department officials that she and her staff were stepping aside "because of their familiarity with some of the parties and the need to ensure that there be no misperceptions about the impartiality of the investigation," according to a department statement.

The investigations have received widespread attention in recent days following disclosures that the Resolution Trust Corporation had asked Casey's office to open a criminal inquiry into a number of matters relating to the now-defunct Madison Guaranty & Trust, including the possible improper use of depositors' funds for contributions to Clinton's 1984 reelection campaign as governor of Arkansas.

Yesterday, Republicans on the House Banking Committee asked Chairman Henry B. Gonzalez (D-Tex.) to open hearings on Madison, which had business relationships with a partnership half-owned by Bill and Hillary Clinton and with companies formerly controlled by Arkansas Gov. Jim Guy Tucker (D). Rep. Jim Leach (Iowa), the committee's ranking Republican, called Madison "a rogue thrift" and said Republicans are concerned that "Keating-like influence peddling may have occurred, although on a smaller, state-centered scale" -- a reference to the scandal involving five U.S. senators and S&L executive Charles H. Keating Jr. Madison failed in 1989 at an estimated \$ 47 million cost to taxpayers.

The Washington Post, November 10, 1993

Casey's office also is probing Capital Management Services, a Small Business Administration-backed investment fund that provided a \$ 300,000 loan in April 1986 to Susan McDougal, a former business partner of Clinton and the wife of Madison's owner, James McDougal. Part of the loan was used by Whitewater Development Corp., the firm half-owned by the Clintons, to buy a tract of rural land near Little Rock. White House officials have said the Clintons had no knowledge of the purchase, which was made by the McDougals.

David Hale, a retired municipal judge who has been indicted on fraud charges, has publicly alleged that he was pressured by Clinton to make the loans as a means of shoring up Madison's books -- a claim that has been flatly denied by the White House.

The Arkansas probes have been repeatedly played down by White House and Justice Department officials, and last week press secretary Dee Dee Myers dismissed Hale's allegations as stories concocted to "save his butt."

Casey's recusal is the latest sign that the investigations are being taken more seriously. Late last week, Associate Attorney General Webster L. Hubbell, a former partner of Hillary Clinton in the Rose law firm in Little Rock, sent a memo to Attorney General Janet Reno and Heymann stating he was also recusing himself and his entire staff from the matter. The Rose firm had previously represented Madison, and Hubbell later represented the RTC in a lawsuit against Madison's accountants.

Hubbell is the No. 3 official in the Justice Department; his responsibilities include overseeing civil matters relating to the savings and loan industry. Department officials said Hubbell would have had no direct oversight over the Little Rock criminal probes anyway.

Randy Coleman, Hale's lawyer, who had initially sought appointment of an independent counsel last September in the days preceding Hale's indictment, said yesterday that Casey's recusal was "kind of a step in the right direction" although a "little less" than what he requested.

"David Hale always said he wanted the playing field to be a little more level," said Coleman. "You would hope this means an objective investigation."

Casey, a former legislative aide to Sen. Dale Bumpers (D-Ark.), in September turned down Coleman's request that Hale be granted immunity in exchange for information about Clinton and other political figures in the state who had gotten loans from Capital Management, including Tucker.

After consulting with high-level department officials, Casey said she saw no reason to step aside and that Hale's allegations lacked "specifics."

That came one month after Coleman had contacted the White House about Hale's allegations, calling associate counsel William Kennedy in mid-August. "I told him we have clients with mutual problems developing in a federal investigation down here," Coleman said yesterday.

A few days later, Coleman said, Kennedy called back and asked him if it would be alleged there were any "face to face" meetings between Clinton and Hale -- a question that Coleman said he answered in the affirmative. But Coleman said Kennedy did not accept his offer to meet with him in Washington to discuss the

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matter.

Coleman said he was not asking Kennedy to intervene in the case. White House senior aide Bruce Lindsey said that Kennedy, a former partner of Hillary Clinton and Hubbell in the Rose law firm, discussed Coleman's statements with White House counsel Bernard Nussbaum, but neither took any action or alerted anyone else in the White House. "Both he and Bernie didn't do anything with the information because they didn't take it seriously," said Lindsey.

LANGUAGE: ENGLISH

LOAD-DATE: November 10, 1993



U.S. Department of Justice

Office of the Independent Counsel

Little Rock, Arkansas

March 19, 1994

Randy Coleman, Esq.
Skokos & Coleman, P.A.
Suite 3200
425 West Capital
Little Rock, Arkansas 72201-3439

Re: David L. Hale

Dear Mr. Coleman:

On the understandings specified below, the Office of the Independent Counsel ("this Office") will accept a guilty plea from David L. Hale to a criminal information charging him with violations of (1) Title 18, United States Code, Section 371, and (2) Title 18, United States Code, Sections 1341 and 2. These charges each carry a maximum sentence of five years' imprisonment, a maximum term of three years' supervised release, a maximum fine of the greatest of \$250,000, twice the gross gain, or twice the gross loss, and a mandatory \$100 special assessment. The total maximum sentence of incarceration on both counts is 10 years' imprisonment.

If David L. Hale fully complies with the understandings specified in this Agreement, he will not be further prosecuted for any crimes related to his participation in the conduct of the affairs of Capital Management Services, Inc., Diversified Capital, Inc., and Madison Guaranty Savings and Loan, and any other crimes, to the extent David L. Hale has disclosed such criminal activity to this Office as of the date of this Agreement.

The understandings are that David L. Hale shall truthfully disclose all information with respect to the activities of himself and others concerning all matters about which this Office inquires of him, shall cooperate fully with this Office, the Federal Bureau of Investigation and any other law enforcement agency so designated by this Office, shall attend all meetings at which his presence is requested with respect to the matters about which this Office inquires of him, and further, shall truthfully testify before the grand jury and/or at any trial or other court proceeding with respect to any matters about

DPB 000079

which this Office may request his testimony. Any assistance David L. Hale may provide to federal criminal investigators shall be pursuant to the specific instructions and control of this Office and those investigators. This obligation of truthful disclosure includes an obligation upon David L. Hale to provide to this Office, upon request, any document, record or other tangible evidence relating to matters about which this Office or any designated law enforcement agency inquires of him.

It is further understood that the sentence to be imposed upon David L. Hale is within the sole discretion of the sentencing judge. This Office cannot and does not make any promise or representation as to what sentence David L. Hale will receive. However, this Office will inform the sentencing judge and the Probation Department of (1) this Agreement; (2) the nature and extent of David L. Hale's activities with respect to this case; (3) the nature and extent of any and all other activities of David L. Hale which this Office deems relevant to sentencing; and (4) the full nature and extent of David L. Hale's cooperation with this Office and the date when such cooperation commenced. In so doing, this Office will use any and all information it deems relevant, including information and statements provided by David L. Hale both prior to and subsequent to the signing of this Agreement. In addition, if it is determined by this Office that David L. Hale has provided substantial assistance in an investigation or prosecution, and if David L. Hale has otherwise complied with the terms of this Agreement, this Office will file a motion, pursuant to Section 5K1.1 of the Sentencing Guidelines, advising the sentencing judge of all relevant facts pertaining to that determination and requesting the Court to sentence David L. Hale in light of the factors set forth in Section 5K1.1(a)(1)-(5).

It is understood that, even if such a motion is filed, the sentence to be imposed on David L. Hale remains within the sole discretion of the sentencing judge. Furthermore, this Office retains the right to present to the sentencing judge and Probation Department, either orally or in writing, any and all facts and arguments relevant to sentencing. It is further understood that this Agreement in no way affects or limits this Office's right to respond to and take positions on post-sentencing motions or requests for information which relate to reduction or modification of sentence.

It is further understood that David L. Hale must at all times give complete, truthful, and accurate information and testimony and must not commit any further crimes whatsoever. Should David L. Hale commit any further crimes or should it be determined that he has given false, incomplete, or misleading testimony or information, or should he otherwise violate any provisions of this Agreement, David L. Hale shall thereafter be

subject to prosecution for any federal criminal violation of which this Office has knowledge, including, but not limited to, perjury and obstruction of justice. Any such prosecutions may be premised upon any information and statements provided by David L. Hale both prior to and subsequent to the signing of this agreement. Moreover, any such prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against David L. Hale in accordance with this Agreement, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of any such prosecutions. It is the intent of this Agreement to waive any and all defenses based on the statute of limitations with respect to any prosecutions which are not time-barred on the date this Agreement is signed.

Furthermore, it is agreed that in the event that it is determined that David L. Hale has violated any provision of this Agreement, (i) all statements made by David L. Hale to this Office or other designated law enforcement agents, or any other testimony given by David L. Hale before a grand jury or other tribunal, whether prior to or subsequent to this Agreement, or any leads from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings hereafter brought against David L. Hale and (ii) David L. Hale shall assert no claim under the United States Constitution, any statute, Rule 11(e)(6) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule, that statements made by him prior to or subsequent to this Agreement, or any leads therefrom, should be suppressed. It is the intent of this Agreement to waive any and all rights in the foregoing respects.

It is further understood that this Office agrees to take steps that the Office determines to be appropriate to assist David L. Hale in maintaining his privacy interests.

With respect to this matter, this Agreement supersedes all prior, if any, understandings, promises and/or conditions between this Office and David L. Hale. No additional promises, agreements, and conditions have been entered into other than those set forth in this letter and none will be entered into unless in writing and signed by all parties.

Very truly yours,

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
Independent Counsel

Rusty Hardin
RUSTY HARDIN
Associate Counsel

Denis J. McInerney
DENIS J. MCINERNEY
Associate Counsel

AGREED AND CONSENTED TO:

David L. Hale
David L. Hale

3-19-94
DATE

APPROVED:

Randy Coleman
Randy Coleman, Esq.
Attorney for David L. Hale

3/19/94
DATE

**DEPOSITION OF RICHARD M. PENCE, JR.
IN RE: S. RES. 120**

WEDNESDAY, OCTOBER 18, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of RICHARD M. PENCE, JR., called for examination pursuant to notice of deposition, at 10:15 a.m. in Room 534 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, Esq.
Majority Deputy Special Counsel
GLENN F. IVEY, Esq.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PAUL J. FISHMAN, Esq.
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Room 4114
Washington, DC 20530
On behalf of the Deponent.

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EXHIBITS

DEPOSITION NUMBER	IDENTIFIED
Exhibit 001484	30, 2354
Exhibit 007039	31, 2355
Exhibit 007049	32, 2356
Exhibit 006671-006672	33, 2358
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P R O C E E D I N G S

Whereupon,

RICHARD M. PENCE

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Richard Martin Pence, Jr.

Q And your present business address?

A United States Attorney's Office, Post Office Box 1229, Little Rock, Arkansas 72203.

Q And your present position in the U.S. Attorney's Office in Little Rock?

A I'm the civil chief.

Q How long have you been the civil chief in that office?

A I have been the civil chief since approximately 1981. I went to work in the U.S.

4

Attorney's Office in March of 1970. I have been there ever since.

Q Initially as an assistant U.S. Attorney?

A Yes, sir.

Q In 1970?

A Yes, March of 1970.

Q You became chief of the civil division in 1981?

A Yes.

Q You have been chief of the civil division from 1981 to the present?

A Yes.

Q Now, was there a time during that time period when you assumed some other duties as acting U.S. Attorney?

A Well, I was acting U.S. Attorney for only five months.

Q Which months were those?

A March 1 of '93 until approximately August 15 of '93. I don't remember the precise date in August, but it was August.

Q Other than this position as acting U.S.

1 Attorney during this time period, have you been
2 acting U.S. Attorney on any other occasions?

3 A No. That was the one and only time.

4 Q So, from 1981 to the present, you have been
5 chief of the civil division, with the exception of
6 this one time period between 3/1/93 and 8/15/93 when
7 you were acting U.S. Attorney?

8 A I was still the civil chief.

9 Q You held both titles?

10 A Yes. But during that little time frame, we
11 didn't have really a -- I was it. We didn't have a
12 criminal chief, civil chief. I was it.

13 Q This deposition is being conducted pursuant
14 to Senate Resolution 120. The resolution establishes
15 a special committee administered by the Banking
16 Committee to conduct an investigation involving
17 Whitewater Development Corporation, Madison Guaranty
18 Savings & Loan Association, Capital Management
19 Services, Inc., the Arkansas Development Finance
20 Authority and other related matters.

21 Section 1(b)(2)(c) of Senate Resolution 120
22 authorizes investigation and public hearings into

1 whether the Department of Justice has improperly
2 handled RTC criminal referrals relating to Madison
3 Guaranty Savings & Loan Association or Whitewater
4 Development Corporation. This will be the focus of
5 today's deposition.

6 You were requested to testify on October 5,
7 1995. This deposition is being taken in advance of a
8 public hearing that may be held later in October or
9 sometime in November or possibly at some later
10 point. There is a possibility you may testify at the
11 hearing.

12 We will be asking you a series of
13 questions. You are testifying under oath. If you
14 don't understand a question, let us know and we will
15 rephrase it. The stenographer will prepare a record
16 of questions and answers. The deposition will be
17 treated as committee confidential until the
18 commencement of the hearings.

19 Prior to the hearings, you will receive a
20 letter from the committee telling you that you may
21 come to the Senate to review the transcript of your
22 deposition and make note of any corrections for

1 transcription on an errata sheet. If you are called
2 to testify at a public hearing, you will be permitted
3 to have a copy of a deposition transcript four days
4 in advance of your testimony.

5 You may be represented by counsel.

6 Objections to the form of questions will be noted for
7 the record. Counsel may object on grounds of
8 privilege or relevance. The committee chairman may
9 rule on objections where the witness refuses to
10 answer a question.

11 Now, in August of 1995, on August 25, 1995,
12 the committee submitted a request to the Department
13 of Justice for documents. As a result of the
14 committee's request, were you requested to review
15 your files for documents related to this matter.

16 A I don't have any files on this matter.
17 After a U.S. Attorney came, Ms. Casey, then whatever
18 files we had became her files. I don't have any
19 files of my own.

20 Q So, you did not have any files in your
21 possession and therefore did not turn any over to the
22 department.

1 A I did not have any to turn over, no.

2 Q Did you speak to anyone other than
3 Mr. Fishman this morning with respect to the
4 substance of your testimony today.

5 A No. Mac Dodson and I, the other witness
6 also today did travel together. Of course, we were
7 colleagues, we talked about what happened back then
8 during the period of time in question but other than
9 that, no.

10 Q What was the gist of your conversation this
11 morning.

12 A We just kind of relived events, what
13 happened, who did what, the highlights and so forth.

14 Q Which highlights did you talk about this
15 morning.

16 A Well, of course, when, the RTC referral
17 that you are interested in, that came to our office,
18 I had no involvement whatsoever. So, he -- I already
19 knew all this anyway, by the way, because most of
20 this has been in the newspapers. The referral came
21 in and Mr. Banks, our U.S. Attorney, recused and sent
22 it to the Department of Justice. I knew that

1 anyway.

2 Q Mr. Dodson was the first assistant at the
3 time?

4 A Yes.

5 Q This is what he related to you this
6 morning?

7 A Yes.

8 Q What else did he relate to you.

9 A I remember asking him, I couldn't remember
10 when the referral -- not referral -- when it was sent
11 to the Department of Justice. I believe he said he
12 recalled somewhere around October of '92. He wasn't
13 for sure. That's really about it.

14 Q And what did you tell him with respect to
15 your own knowledge.

16 A I told him that -- we kind of laughed about
17 this. He told me, he said Pence, this thing will
18 never come up on your watch. It came back, and we
19 laughed about that, that it came back. He said you
20 know, it will never come up, you will never see it.

21 But the damn thing came back. So, we
22 laughed about that.

10

1 Q When you say he said this will never come
2 up on your watch, you mean those were words he said
3 to you before he left the office.

4 A Yes. He told me when he was leaving, he
5 said I was going to be the acting U.S. Attorney until
6 a U.S. Attorney came, that this RTC referral had come
7 in, that Mr. Banks had recused and it had been sent
8 to the Justice Department, just so I would know it.

9 I did not know that, because I was not
10 involved in it. He told me that, said you need to be
11 aware of this, that it did come in. It was sent to
12 the department, but his thought was that our office
13 had recused and that would be the end of it.

14 But that wasn't the end of it. It came
15 back.

16 Q Is that the extent of your conversation
17 with him this morning.

18 A Yes.

19 Q Did you say anything else to him about your
20 experience with it this morning.

21 A I told him that it came back in around June
22 or July and that another assistant, Fletcher Jackson,

1 who I think will be one of your witnesses, I
2 conferred with him, and Fletcher at that time had
3 just -- he was involved in the investigation, David
4 Hale and the SBA fraud.

5 Fletcher thought that records of the
6 transactions involved in that RTC referral possibly
7 might have some bearing on the Hale investigation and
8 might possibly shed some light on it or might be of
9 some use. So, he recommended that we not close the
10 matter at that time and that when he had time, that
11 he would review those records to see if it had any
12 significance with regard to the Hale case.

13 So that's what we discussed. I told Mac
14 that. He may have known that anyway.

15 Q Is there anything else you told Mr. Dodson
16 this morning with respect to your experience with
17 this referral.

18 A No.

19 Q In kind of a back-door way we have gone
20 through the questions I intended to ask you. But I
21 ask you these questions because you have discussed
22 this with a prospective witness.

1 A I will tell you exactly what I told him.

2 Q You have just done that; correct.

3 A That's right. He was the executive
4 assistant under Mr. Banks.

5 Q Now, at the risk of going over some of
6 these things, I would like to do this in some kind of
7 order.

8 When is the first time you heard of this
9 RTC criminal referral relating to Madison Guaranty or
10 Whitewater Development Corporation.

11 A When Mac Dodson told me shortly before he
12 left the U.S. Attorney's Office that I needed to be
13 aware that the referral had come in from RTC, that
14 Mr. Banks had recused our office.

15 Q When would that have been.

16 A Well, approximately -- when did he tell
17 me?

18 Q Yes.

19 A It would be probably the last week of
20 February of '93 or possibly the last two weeks. He
21 and Mr. Banks left effective March 1. It would have
22 been within a couple weeks prior to that time. He

1 felt I needed to be aware of that.

2 Q That's the very first time you heard about
3 this criminal referral.

4 A That's right. I was involved in civil
5 litigation at that point in time pretty much
6 exclusively. I was not aware that -- I didn't do
7 criminal prosecutions, and I was not aware the
8 referral had come in.

9 Q How big is that office? Or how big was
10 that office at the time.

11 A At that time we had 17 assistants
12 approximately. There has been some coming and going
13 to some extent. That is just a rough number. It was
14 not a big office.

15 Q Right. It would not be unusual for
16 assistants to talk about cases in the office.

17 A Not unusual in the slightest.

18 Q A case listing the presidential candidate
19 Clinton and his wife, Hillary Clinton, as potential
20 witnesses is a significant case by U.S. Attorneys'
21 standards; correct.

22 A Yes, yes.

1 Q So it wouldn't be unusual for people --
2 strike that.

3 But despite that, you are saying you heard
4 no conversation with respect to this referral during
5 that time period.

6 A None. I really do not recall anyone
7 mentioning that to me or hearing anything about it.
8 I sure don't.

9 Q So the absolute first time you heard about
10 this was February --

11 A As I recall, it was shortly before
12 Mr. Banks and Mr. Dodson left our office.

13 Q Now, after talking to Mr. Dodson about it,
14 did you review any paperwork on it.

15 A No, I did not.

16 Q Did you talk to anybody else about it?

17 A No, no, I did not.

18 Q In your office, in the U.S. Attorney's
19 Office.

20 A No, I did not.

21 Q Mr. Banks.

22 A Mr. Banks may have mentioned it, basically

1 the same thing, that Mac had said that it had come
2 in, they had recused, it had been sent to the
3 Department of Justice. Mac's parting words were this
4 thing will never come up on your watch. So I wasn't
5 worried about it. He, I guess, never thought it
6 would come back and I didn't think it would come
7 back.

8 Q Did you have any discussions with the
9 Department of Justice about it, inquiring as to the
10 status.

11 A No, none.

12 Q When were you informed that you would be
13 named acting U.S. Attorney.

14 A I would say approximately two weeks before
15 Mr. Banks left. That would be mid-February of '93.

16 Q Who informed you.

17 A Mr. Banks.

18 Q Did you talk to anyone at the Executive
19 Office for U.S. Attorneys about this?

20 A About the referral, you mean?

21 Q No.

22 A About being acting?

1 Q Yes.

2 A After it had become official, I think I did
3 talk with somebody that it was confirmed that I would
4 be the acting. I believe I did speak with somebody
5 in the executive office about what I was supposed to
6 do and oath of office and the formalities of it.

7 I can't remember who it was.

8 Q Do you know Webster Hubbell.

9 A Yes, but not well.

10 Q How do you know Mr. Hubbell.

11 A He, of course, was a Little Rock attorney,
12 and his daughter is the same age as my son. For a
13 period of time, they went to the same school. We
14 were never close friends. I have never been in his
15 home. I knew of him and knew who he was, and I think
16 he may have known my name. I'm not even sure of
17 that. If he saw me on the street, he may not have
18 remembered my name; I don't know. I knew who he
19 was. He had been the mayor of the city.

20 Q Did you meet with him socially or go to
21 dinner with him or drinks.

22 A No, no, no. We had no social relationship

1 whatsoever, no.

2 Q So you knew him from school functions.

3 A Yes. I remember seeing him at the school
4 and possibly at a Bar function, possibly hello, how
5 are you, very casual.

6 Q Did you have any discussions with him prior
7 to being appointed as acting U.S. Attorney.

8 A No.

9 Q Did you know Paula Casey.

10 A No, I did not. I did not know Ms. Casey
11 before she became U.S. Attorney, I didn't.

12 Q What about Bill Clinton and Hillary
13 Clinton.

14 A No. I'm one of the few people in Arkansas
15 that don't claim to know the President and First
16 Lady. We have never been formally introduced.

17 Q Did you have any discussions with anybody,
18 for instance, at the White House prior to your
19 appointment as acting U.S. Attorney.

20 A None.

21 Q Anybody from the campaign, the Clinton
22 campaign.

1 A None.

2 MR. FISHMAN: Off the record.

3 (Discussion off the record.)

4 BY MR. GICALE:

5 Q Now, when they told you that the file had
6 been sent to Justice and you didn't have to worry
7 about it, it wouldn't come back on your watch, did
8 your office maintain a copy of the file? Was there
9 an assistant that had a copy of the file.

10 A We had the file pertaining to this RTC
11 referral in a vault in our office.

12 Q So, it wasn't assigned to a particular
13 assistant or anything?

14 A No. It was not.

15 Q What is your understanding of what happened
16 to the referral within the Department of Justice
17 before it eventually came back?

18 MR. FISHMAN: What is his understanding now
19 or what was his understanding at the time?

20 BY MR. GICALE:

21 Q Your understanding at the time was that it
22 had been sent there and your office had been recused;

1 correct.

2 A Right.

3 Q Then there came a point in time when your
4 office received this referral back?

5 A Yes.

6 Q Did you subsequently learn what had
7 happened between the time it was sent to the
8 Department of Justice and the time you received it in
9 the district in Little Rock.

10 A I got a call from Deborah Westbrook, who
11 was then with the Executive Office for the U.S.
12 Attorneys within the Department of Justice. She told
13 me that --

14 Q Approximately when was this.

15 A Probably June of '93, mid-to-late June
16 would be my recollection.

17 She told me that we could -- the office
18 could not recuse and referred me to some page in the
19 U.S. Attorney's manual and that there really was not
20 proper grounds for recusal and that in the meantime
21 the RTC referral had been reviewed by the Department
22 of Justice criminal division, which found that there

20

1 was no federal criminal violation involved.

2 So that if our office wanted to decline any
3 further action on the referral, then that would be a
4 legitimate basis for doing that, if that was our
5 decision, but at that time we could not recuse and
6 that I would be getting something in the mail to that
7 effect.

8 And then probably a couple weeks later, it
9 was one week to two weeks, I got from the Department
10 of Justice a little package. It had the criminal
11 division's report. There may have been -- and I'm
12 not sure of this -- but there may have been a cover
13 letter or memo maybe, rather than a letter, basically
14 saying here is the case back and here is the criminal
15 division, nothing of any substance, just summarizing
16 what had happened. I'm not sure of that, but there
17 may have been a cover.

18 Q Who was that cover memo from.

19 A It could have been from Ms. Westbrook or it
20 could have been from -- I'm not sure, to be honest.
21 I have a vague recollection, but not a firm
22 recollection, that there was some sort of cover

1 letter or cover memo basically saying what
2 Ms. Westbrook had told me over the phone.

3 Q What else was in the package.

4 A Oh, I think there was some -- it seemed
5 like there was a transmittal memo to the criminal
6 division saying here is this RTC referral, please
7 review this, more like a routing slip. There may
8 have been a couple items like that to indicate that
9 it had been referred to the criminal division.

10 That's really about all I remember being in
11 the little package. It wasn't a huge package. It
12 did not include the exhibits to the referral. The
13 referral may have been in there or a copy of it, the
14 RTC's referral of the matter, but without the
15 exhibits. That possibly may have been in there.

16 Q Do you recall whether or not there was a
17 memo from Mr. Margolis or Mr. Frazier in this
18 package.

19 A I don't remember. I really don't remember
20 those names. I'm not saying absolutely not. I just
21 don't remember.

22 Q Did you have any conversations upon

22

1 receiving this with either Mr. Margolis or --

2 A No.

3 Q -- Mr. Frazier.

4 A No. No one -- we got the call and we got
5 the little package a week or two weeks later and that
6 was that.

7 Q And then what did you do at that point once
8 you got the call and the package.

9 A That's when I discussed it with Fletcher
10 Jackson, an assistant in our office. He has been
11 there a long time and is a colleague of mine. He was
12 working on the David Hale investigation. It looked
13 like they had a good case. That's what he told me,
14 and that they would probably have an indictment maybe
15 by September, that the transactions might possibly be
16 of some use in that investigation, he would like to
17 take a look at them.

18 Q Now, at this point in time, this would have
19 been late June or early July.

20 A This would have probably been in July,
21 probably.

22 Q And so, did you turn this packet over to

1 him at this point.

2 A So I said fine, let's do that, we won't
3 officially close it, we will -- you can review the
4 records whenever you have time. The immediate
5 indictment against Hale involved other matters, not
6 this RTC thing. They already had a case in the works
7 on Mr. Hale.

8 So, that was, I guess, the first item of
9 business, and I believe that we did indict Mr. Hale.
10 I believe that indictment did come down in
11 September.

12 Anyway, so that was what was done.
13 Fletcher was going to review those documents to see
14 what significance they might have with regard to
15 David Hale and that small business investment company
16 he had. I can't think of the name of it now.
17 Capital -- I can't remember, whatever that small
18 business investment company that Mr. Hale had. To
19 see if it would have any bearing on Mr. Hale and his
20 company. So that's what we did.

21 I think Fletcher later took the actual
22 exhibits, the records, I believe he took them out to

1 the FBI office probably in late August, early
2 September, somewhere in there, but I don't think he
3 ever got into them very deeply, because as this thing
4 got bigger than Fletcher and I, we retreated to
5 obscurity and the thing blew up, and Mr. Mackay came
6 in from the Department and Ms. Casey was there, and I
7 didn't have any further involvement and neither did
8 Fletcher.

9 I guess the independent counsel ended up
10 with the records of the transaction involving this
11 RTC referral.

12 Q Did you have any further discussions with
13 anybody at main Justice or within your office about
14 this decision to not allow your district to recuse
15 itself in the matter after you got this package and
16 this phone call.

17 A I got a letter from Jean Lewis of the RTC
18 office in Kansas City, just an inquiry into what had
19 happened. I wrote her back and told her that
20 Mr. Banks had recused our office and this matter had
21 been sent to the Department of Justice. She never
22 wrote again, and she never called. So I had that one

1 letter.

2 Q Two letters, one letter to you and one --

3 A She wrote me and I wrote her back.

4 Q All right. Did you discuss this recusal
5 issue with anyone else in your office as to whether
6 or not to challenge it or anyone at the Department of
7 Justice.

8 A I never considered challenging the
9 department's decision on the recusal because I
10 thought that would be pointless.

11 Q Did you have an opinion as to whether his
12 request for recusal was valid?

13 MR. FISHMAN: What do you mean by "valid"?

14 BY MR. GICALE:

15 Q Whether or not you agreed with the request
16 to have the office recuse --

17 A I agreed with Mr. Banks. I think he did
18 the right thing. Our office, when Mr. Banks was U.S.
19 Attorney, did prosecute Mr. McDougal, who was
20 president of the Madison Guaranty Savings & loan, and
21 we lost the case. Mr. McDougal was very public about
22 criticizing Mr. Banks as having brought a political

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1 indictment and that type of thing.

2 I think that was Mr. Banks's concern, that
3 anything we did would look like sour grapes or a
4 vendetta or something. That was a concern to him.

5 Mr. McDougal is very, if you have had the
6 opportunity to speak with him, he is quite vocal.

7 Q Do you know Mr. McDougal.

8 A No. I have seen him on TV many times.

9 Q Did you have any contacts with anyone at
10 the FBI with respect to this referral when it came
11 back.

12 A No, I didn't. I sure didn't. My main -- I
13 discussed it with Fletcher as to what to do.

14 Q Was Fletcher the prime contact between the
15 FBI and your office.

16 A He probably had some contact, because he
17 was working with the bureau agents on the ongoing
18 investigation of David Hale. So I'm sure he may have
19 had some discussions with agents. But I did not,
20 directly.

21 Q Did you or anyone in your office have
22 contacts with anyone at the RTC other than Jean Lewis

1 on this matter.

2 A I know I didn't, and I don't think -- I
3 doubt if Fletcher did. Not to my knowledge. Not
4 until after Ms. Casey came. Before Ms. Casey came,
5 to my knowledge, we had no inquiry from the RTC to
6 our office other than that letter, that one letter
7 that Ms. Lewis sent.

8 Q Just to clarify this, other than this
9 letter, these two letters involving Jean Lewis, do
10 you know whether or not Fletcher Jackson or anyone
11 else had any contact with Jean Lewis with respect to
12 this referral after you received these back.

13 A I'm not sure. I don't think so, but I'm
14 not sure.

15 Q Now, after you turned this over to Fletcher
16 Jackson, was that the end of your involvement with
17 this referral.

18 A Yes. I told Ms. Casey about it when she
19 came. I just informed her what had happened, that it
20 had come back, that the criminal division had
21 reviewed it and had not found any federal criminal
22 offense involved in the transactions. I probably

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1 mentioned what Fletcher wanted to do. I'm not sure
2 of that. I should have if I didn't. I should have
3 told her that. I believe I did, but I don't have any
4 specific memory of it. But I should have told her
5 that. It would have been my duty to do that.

6 It was not a big item at that point.

7 And --

8 Q Did you go over the exhibits in this
9 package with her.

10 A No, I didn't. I remember I read the
11 department's criminal division's report, but no, I
12 never did look at the exhibits, no.

13 MR. FISHMAN: Maybe you are talking about
14 two different things when you say exhibits.

15 THE WITNESS: When I say "exhibits," I mean
16 the documents pertaining to the transactions that
17 were involved in the RTC's referral.

18 BY MR. GICALE:

19 Q I understand that. Maybe I wasn't clear.

20 Did you go over the package of documents
21 you received from the Department of Justice when they
22 returned this matter to you with her.

1 A No. Actually sit down and go over it maybe
2 a page at a time? No, I didn't. I verbally told her
3 what had happened. After she had been there a couple
4 of weeks or so, I gave her the package of materials.
5 I had it sitting on the corner of my desk, and I
6 handed that over to her or gave it to her secretary,
7 one or the other. I don't know whether I personally
8 handed it to her, but I got it to her a couple of
9 weeks or so after she had arrived. But I had already
10 told her basically what had happened.

11 Q Now, she arrived when.

12 A It would be mid-August of '93,
13 approximately 15th. It might have been the 20th. I
14 don't remember for sure.

15 Q Did you make a recommendation to her as to
16 what to do with this matter at this point in time?
17 That's the first question.

18 A As to what to do, I probably did not. I
19 believe what I said was there is ample reason to take
20 no further action on it because of the criminal
21 division's review and their finding, and I think I
22 mentioned -- again, I'm not sure -- that Fletcher

1 wanted to, as he found time, to see if these records
2 of these transactions would have any use in the David
3 Hale investigation.

4 I believe that's what I told her.

5 I mean as to a specific recommendation like
6 you need to write a letter declining or you need to
7 write a letter saying we will hold this matter for
8 further action, no, I didn't get that specific.

9 Q Now, did she indicate to you at that point
10 in time what she intended to do with it.

11 A No, she did not.

12 Q You previously testified that Fletcher told
13 you to keep the matter open because he wanted to look
14 at the documents to see whether they were relevant to
15 his Hale prosecution; correct.

16 A That's right.

17 Q So you turned it over to him and as far as
18 you were concerned, it remained open until some
19 subsequent decision would be made; correct.

20 A Yes, yes.

21 (Exhibit 001484 identified.)

22 BY MR. GICALE:

1 Q I'm going to show you what's marked for
2 identification as document number 001484. It is a
3 memo dated February 18, 1993 to John Keeney from
4 Douglas Frazier regarding recusal by the U.S.

5 Attorney's Office, Eastern District of Arkansas. Is
6 that one of the routing slips you were referring to.

7 A I think so. It can't be 100 percent sure.
8 It probably was included in the package that was sent
9 to our office.

10 Q Now, I'm also going to show you what's
11 marked for identification as Exhibit 007039, a memo
12 to Douglas Frazier from John Keeney dated March 19,
13 1993 with respect to recusal by the U.S. Attorney's
14 Office for the Eastern District of Arkansas.

15 (Exhibit 007039 identified.)

16 (Witness examined the document.)

17 THE WITNESS: I think this was probably in
18 the package that was sent to us. I can't be 100
19 percent certain, but I think it probably was.

20 BY MR. GICALE:

21 Q Now, I'm also going to show you what's
22 marked for identification as 007049 through 007 --

32

1 the second page attached doesn't have a number. It
2 is a letter dated January 27, 1993 to Donna Henneman
3 regarding RTC referral C0004 from Charles Banks.

4 (Exhibit 007049 identified.)

5 BY MR. GICALE:

6 Q With respect to the request for recusal,
7 did you -- was this in the package? By "the
8 package," I mean the package sent to you from EOUSA
9 after your call with Westbrook.

10 (Witness examined the document.)

11 A I'm not sure that this was in there. These
12 other two documents look more familiar than this one
13 does, the letter from Mr. Banks to Ms. Henneman.

14 Q Did you ever have a chance to review that
15 letter.

16 A I don't have any specific memory of ever
17 seeing this letter before, the letter of January 27,
18 '93 from Mr. Banks.

19 Q You didn't discuss it with Dodson.

20 A No, he did not discuss this with me, that's
21 for sure, at the time.

22 Q Then I'm going to show you what's marked

1 for identification as Exhibit 006671 and 006672, a
2 memo dated February 9, 1993 from Anthony Moscato
3 through Doug Frazier to Stuart Gerson. Did you see
4 this memo in the package sent to you by EOUSA?

5 (Exhibit 006671-006672 identified.)

6 (Witness examined the document.)

7 THE WITNESS: I don't remember. I'm
8 sorry. I just don't remember whether it was or
9 wasn't.

10 BY MR. GICALE:

11 Q Just to go back one minute, with respect to
12 Exhibit Number 007049, just to direct your attention
13 to the last paragraph of that letter, take a look at
14 that.

15 (Witness examined the document.)

16 A Okay.

17 Q One of the things that Mr. Banks said in
18 this letter was that the taking of 302s, reading the
19 last sentence of that first page, "from these
20 individuals should determine whether there is merit
21 to substantiate further investigation."

22 A Yes.

1 Q Did Mr. Banks or Mr. Dodson indicate to you
2 that the taking of 302s should be done in this
3 matter.

4 A No --

5 MR. FISHMAN: Did they tell them that --

6 BY MR. GICALE:

7 Q When they told them about the case.

8 A No. I may be interpreting that letter
9 differently from you. I read that to be saying that
10 the Department of Justice should consider doing this,
11 not our office. That is my interpretation.

12 Q Did he indicate that to you --

13 A No. That was never discussed whether we
14 should do anything. I mean, my impression was we
15 didn't need to do anything, it was no longer in our
16 hands.

17 Q I'm going to show you what's marked for
18 identification as Exhibit Number 007041 through
19 7045. This is a memo dated February 23, 1993 from
20 Mark MacDougall, trial attorney, to Gerald McDowell,
21 criminal fraud section, criminal referral C0004. Can
22 you identify that for us.

1 (Exhibit 007041-007045 identified.)

2 MR. FISHMAN: You mean has he ever seen
3 it?

4 MR. GICALE: Can he identify it.

5 BY MR. GICALE:

6 Q Or have you ever seen it?

7 A If you will give me a minute here.

8 (Witness examined the document.)

9 This appears to be the criminal division of
10 the Justice Department report on the review of the
11 RTC referral that was included in the package that
12 was sent to our office. Again, I can't be 100
13 percent certain, but it does appear to be that
14 report.

15 Q Now --

16 A I remember reading something like that. I
17 can tell you that for sure.

18 Q Now, when you reviewed that report, do you
19 recall whether or not -- you saw a report that looked
20 something similar to this.

21 A Yes. It was either that or something very
22 similar to it.

1 Q Do you know whether or not the document you
2 reviewed indicated whether or not 302s had been taken
3 before they arrived at some recommendation.

4 A I don't remember.

5 Q Do you know whether the document you
6 reviewed indicated whether or not there had been any
7 consultation with anyone from the district in Little
8 Rock before they made a recommendation.

9 A I don't believe I understand what you
10 are --

11 Q Did this memorandum from the criminal
12 division indicate there had been any consultation
13 with assistant U.S. Attorneys from the district in
14 Little Rock before they made the recommendation?

15 A I don't believe it did.

16 MR. IVEY: Are you talking about this
17 memo --

18 MR. GICALE: He can't say with certainty
19 this is the memorandum. The memorandum he reviewed
20 from the criminal division.

21 MR. FISHMAN: The memorandum after the
22 recusal, request to recuse that office?

1 MR. GICALE: Right.

2 (Witness examined the document.)

3 THE WITNESS: I don't believe -- this
4 particular document I don't believe does -- it does
5 not say that, as I recall. I'm not reading it here
6 word for word. I don't think -- whatever I read,
7 whether it was this one or something like it, I don't
8 believe it contained any reference to consultations
9 with assistants in the U.S. Attorney's Office in
10 Little Rock after the matter had been sent to the
11 Justice Department.

12 BY MR. GICALE:

13 Q Now, one of the things you said earlier
14 here is that there was a conclusion here that there
15 were no criminal violations. That's what you said to
16 Ms. Casey; is that correct?

17 A I told her that was the conclusion, that
18 there was no federal criminal violation.

19 Q Now, I'm going to refer to paragraph F on
20 this exhibit, 007045, the last paragraph, the
21 recommendation section.

22 (Witness examined the document.)

1 A Okay. Yes, I have read it.

2 Q Does it indicate anywhere in there, in that
3 recommendation that there is no federal violation.

4 A No. What it says is there is not -- the
5 information does not appear to warrant the initiation
6 of a criminal investigation. Well, to me, that's
7 essentially saying the same thing, that there is no
8 prosecutable case.

9 Q Do you know what this memo was based on,
10 the memo in this package that you reviewed from the
11 U.S. Attorney's Office, what information it was based
12 on.

13 A What information was -- I don't know,
14 because I wasn't involved in the actual forwarding of
15 this information to the department. I feel like I'm
16 pretty sure that the RTC, the referral document which
17 I guess is something in the nature of a summary or
18 comments, I'm sure it went. I don't know. I don't
19 know what all was sent to the Department of Justice.

20 Q Did you inquire of the criminal division as
21 to what they looked at before they arrived at a
22 decision?

1 A I did not.

2 Q I'm going to show you 007039, the memo to
3 Douglas Frazier from Mr. Keeney that's dated March
4 19.

5 A It does have a stamp March 19, 1993.

6 Q All right.

7 (Witness examined the document.)

8 Now, does it say anywhere in that memo that
9 there was no federal violation and that's why they
10 are returning it to your office.

11 A No. This says there is no identifiable
12 basis for recusal by the United States Attorney. But
13 that was part of the information that was given to me
14 that I was told first by Ms. Westbrook via telephone
15 conversation that we did not meet the criteria for
16 recusing.

17 Q The sentence after -- there is a sentence,
18 "we have reviewed the material in the package and
19 have concluded there is no identifiable basis for
20 recusal by the United States Attorney." The sentence
21 after that "Further, we would not question a decision
22 by the United States Attorney to decline further

40

1 substantive action on the referral." Correct.

2 A That's what it says, correct.

3 Q Do you see anything in that memo that
4 states there is no federal violation.

5 A Well, that was the -- not in that
6 document. But it was my understanding that that was
7 the basis for that comment, the criminal division's
8 review.

9 Q Now, when you reviewed this memo, did you
10 go through it in detail and research the case law and
11 compare the analysis of it to the exhibits that you
12 had in your office?

13 A No.

14 Q Were you relying on Fletcher Jackson or
15 another assistant to do that.

16 A Yes. I did not go and do an independent
17 review myself, no, I did not.

18 Q So, you read this memo, conveyed --
19 discussed it with Fletcher Jackson?

20 A Yes.

21 Q And left it up to him to do what he thought
22 was appropriate?

1 A That's right. To take the records and use
2 them to whatever extent they proved to be useful, if
3 at all.

4 Q Now, I'm going to show you what's marked
5 for identification as Exhibit Number 000030, a letter
6 dated May 4, 1993 to the Honorable Richard Pence
7 from Jean Lewis regarding criminal referral C0004.
8 (Exhibit 000030 identified.)

9 BY MR. GICALE:

10 Q Is this a copy of the letter you received
11 from her with respect to an inquiry on the status of
12 this referral?

13 A I believe that it is.

14 Q I'm going to show you what's marked for
15 identification as Exhibit Number 000031, a letter
16 dated May 10, 1993 to Ms. L. Jean Lewis from Richard
17 Pence, Jr., making reference to your letter of May 4,
18 1993.

19 Can you review that document.

20 (Exhibit 000031 identified.)

21 (Witness examined the document.)

22 THE WITNESS: That's my letter.

1 BY MR. GICALE:

2 Q Is it a copy of a letter you sent to Jean
3 Lewis in response to her letter.

4 A Yes, it is.

5 Q In it you indicated that this matter had
6 been forwarded to the office of legal counsel,
7 Executive Office of U.S. Attorneys and gave her a
8 contact phone number?

9 A Yes, I did.

10 MR. FISHMAN: Let me note for the record, I
11 believe that is not the phone number for the
12 executive legal counsel of the Executive Office of
13 U.S. Attorneys.

14 BY MR. GICALE:

15 Q As it turns out, you gave her the phone
16 number for another division.

17 A That may be the case. It wasn't
18 intentional, I can tell you that, if I gave her a bad
19 phone number.

20 Q Did you talk to her on the phone about this
21 at all.

22 A No.

1 Q Did any assistant in your office talk to
2 her about this at this point in time?

3 A Not to my knowledge.

4 Q Did Mr. Roddy from your office talk to her.

5 A To my knowledge, no. Bob Roddy has never
6 told me that he did or he didn't. I would have to
7 limit my answer to my knowledge, and I have no
8 knowledge of it, but of course I can't really answer
9 for Bob Roddy. I don't know why they would. He
10 didn't have anything to do with it.

11 But Ms. Lewis did have other matters, I
12 think. In fact, I remember talking to her on another
13 investigation. So, there may have been reasons for
14 her to talk to assistants in our office on other
15 matters. Maybe she might have asked one of them,
16 hey, do you know anything about this such-and-such
17 referral. I guess that is possible.

18 Q Did you ever state to anyone that you had
19 no intention of acting on this referral and that you
20 planned to let it sit until such time as the new U.S.
21 Attorney Paula Casey took office.

22 A I don't think I ever said that to anybody.

1 No, I didn't say that to anyone.

2 Q You did not.

3 A I did not.

4 Q You say you did not say that. Was that
5 something you thought about doing?

6 A It crossed my mind, to be honest. I didn't
7 relish getting involved in a matter that had
8 political ramifications and media ramifications. I
9 wasn't excited about it. I was apprehensive about
10 it.

11 Politics and criminal prosecution don't
12 mix, and I'm a career department attorney and I was
13 apprehensive about it, but I never made that
14 statement. I feel like we did something. Fletcher
15 took the records and was going to see if they were
16 useful.

17 So, I don't think -- that's not the way I
18 see it. Somebody else may say that, but I don't
19 think we just swept it under the rug.

20 Q Did you say to anyone that if a case
21 against -- if this case against McDougal was taken to
22 trial, it would be thought of as sour grapes due to

1 his acquittal during his first bank trial?

2 A Did I say that to someone? I may have.

3 Q Yes. Do you know who you said it to?

4 A No. That would be consistent with my
5 thought. I thought Mr. Banks had a good reason to
6 recuse. It just didn't work out. It was sent back.
7 But I thought he had a legitimate reason. It turned
8 out to be not a sufficient reason but a legitimate
9 reason. And that was a big concern.

10 So, I may have said that to somebody, and
11 it would be consistent with my thinking.

12 Q Did you tell any individual, either within
13 the district or the RTC, that you believed this
14 referral was highly prosecutable?

15 A No. I never said that to anybody.

16 Q Did you say it was strong, but if taken to
17 trial may look like sour grapes.

18 A No, I did not. I had no reason to believe
19 that either, I might add.

20 Q Were you aware that criminal referral C0004
21 was eventually declined by Paula Casey on October 27,
22 1993.

1 A I did become aware on that later on, yes.

2 In fact, that has been in the newspaper.

3 Q When did you become aware of that.

4 A I think somewhere around November or
5 December of that year, possibly even January of the
6 following year. Somebody got the letter and
7 published it in the newspaper. I don't know how that
8 happened, but it was in the newspaper. Fletcher may
9 have told me that he had heard it was declined. One
10 way or the other.

11 But it wasn't directly from Ms. Casey.

12 Q To go back for a second. The memo you
13 received, the memorandum of law from the Department
14 of Justice with respect to whether or not this case
15 was prosecutable, the author of that was Mark
16 MacDougall. Do you remember that.

17 A I do not remember the names on the
18 document. I'm sorry. I guess I should, but I am
19 drawing a blank.

20 Q In any event, whoever authored that
21 document, did you talk to them about it?

22 A No.

1 Q Let's go back again. You ultimately
2 decided -- you didn't decide. Strike that.

3 Did you play any part in the decision to
4 decline this referral.

5 A No, none.

6 Q Do you know what happened to the referral
7 between the time you sent it to Fletcher Jackson and
8 the time it was declined.

9 A No. Ms. Casey was there then. Michael
10 Johnson was our first assistant and chief of
11 criminal, and he was her primary advisor. Like I
12 said, I went back to obscurity, to my civil cases and
13 had no further involvement.

14 Q Now, while you were acting U.S. Attorney
15 starting in March, who was the first assistant after
16 Mr. Dodson stepped down.

17 A After March, we didn't have one.

18 Q Who was head of the criminal division.

19 A We didn't have one of those, either. We
20 did not have a formally designated chief of criminal
21 in that interim period, because I felt like that is
22 the U.S. Attorney's call. The assistant shouldn't

1 make those kind of decisions.

2 Q Was Mr. Jackson then answering directly to
3 you.

4 A Yes.

5 Q So --

6 A During that little time frame, yes.

7 Q So all the assistants were answering
8 directly to you?

9 A I was in charge of the office during that
10 roughly 5-1/2 months when I was acting U.S.
11 Attorney. I was the head of the office. So, yes,
12 they would.

13 Q Was Mr. Johnson in the office at the time.

14 A Yes, he was.

15 Q How long -- what was his position in the
16 office.

17 A He was an assistant. He was primarily -- I
18 asked him to handle the grand juries during this
19 period of time, which he did. But that was -- he
20 wasn't given any title or anything of that nature.
21 He was responsible for the grand juries.

22 Q When you say "responsible for the grand

1 juries," are you talking about the administrative
2 part of calling the jurors in, making sure the jurors
3 are there, scheduling the juries.

4 A Yes, making sure it operated as it should,
5 that it was on time, that it was going smoothly, that
6 the assistants had their witnesses there.

7 Q Was he presenting witnesses to the grand
8 jury.

9 A He probably had some cases of his own, I'm
10 sure he did.

11 Q What division was he in.

12 A I'm sorry.

13 Q Was he in a division doing criminal work.

14 A He has always done criminal. I can't say
15 he hasn't done civil. Either exclusively criminal or
16 mostly criminal, the whole time he has been in our
17 office.

18 Q The specific kind of criminal work.

19 A He has done a lot of arson cases and he has
20 done some fraud cases.

21 Q Bank fraud?

22 A I think he has, yes. I think he has done

50

1 those.

2 Q How long has Mr. Johnson been in your
3 office.

4 A He has been there quite some time. Gee, I
5 can't remember. Michael was with the Department of
6 Justice, and he was in the -- it seemed like it was
7 the criminal branch of the civil rights division. He
8 came to our office -- George Proctor was the U.S.
9 Attorney.

10 MR. FISHMAN: Off the record.

11 (Discussion off the record.)

12 THE WITNESS: I guess it would be in the
13 late '70s. I'm not sure, but Michael has been there
14 a number of years.

15 BY MR. GICALE:

16 Q At least -- so at least 10 or more years.

17 A Oh, yes, yes. Yes, yes.

18 Q Are you aware that Paula Casey requested
19 recusal from the Madison case on November 8, 1993 by
20 sending a letter to -- strike that.

21 Are you aware that Paula Casey requested
22 recusal from the Madison case on November 8, 1993.

1 A I'm aware that she did make that request.

2 Q When did you become aware of that.

3 A After the fact.

4 Q How did you become aware of it.

5 A Probably office talk or possibly I read it
6 in the paper. Again, it seems like a lot of these
7 items, strange as it seems, ended up being published
8 in the newspaper.

9 Q Did you play any part in her decision to
10 recuse herself?

11 A No, I did not.

12 Q Do you have any understanding as to why she
13 recused herself.

14 A No.

15 Q Do you know to this day why she recused
16 herself.

17 A Well, she was a presidential appointee.
18 That's an assumption on my part. To answer your
19 question literally, no, I don't know. I guess my
20 assumption would be as a political appointee, this
21 was the appropriate thing to do.

22 Q Do you have an understanding as to why she

1 did it after she declined prosecution on the criminal
2 referral C0004? You are shaking your head. .

3 A No, I don't know.

4 Q Did you have any other conversations with
5 Paula Casey -- did you have any conversations with
6 respect to Paula Casey with respect to her recusal on
7 this matter.

8 A No.

9 Q Did you have any further conversations with
10 Paula Casey with respect to this criminal referral
11 after discussing it in August when she came on board.

12 A No.

13 Q Earlier I believe I asked you whether or
14 not you had contact with Webster Hubbell with respect
15 to criminal referral C0004, and your answer was.

16 A I did not.

17 Q Did anyone in your office have contacts
18 with Webster Hubbell with respect to this referral.

19 A To my knowledge, there was no such
20 contact.

21 Q Do you have an understanding as to why
22 Webster Hubbell recused himself from the

1 investigation of matters relating to Madison and
2 David Hale.

3 A No, I do not.

4 Q Did you discuss the recusal of Mr. Hubbell
5 at any time.

6 A No, I did not.

7 Q Are you aware of any discussions between
8 Paula Casey and Webster Hubbell related to criminal
9 referral C0004?

10 A No, I'm not aware of any such
11 communications.

12 Q Are you aware of any communications with
13 Mr. Hubbell and the White House with respect to this
14 referral.

15 A No, I'm not.

16 Q When did you become aware of the issues
17 surrounding the investigation of David Hale?

18 MR. FISHMAN: What issues?

19 BY MR. GICALE:

20 Q When did you become aware of the
21 investigation of David Hale?

22 A Probably June or July of 1993.

1 Q How did you become aware of that
2 investigation.

3 A Fletcher Jackson.

4 Q What did he tell you about it?

5 A He told me that he was working on a case
6 that SBA had referred either to our office or FBI and
7 it involved David Hale and it involved a company that
8 had been established by Mr. Hale as a small business
9 investment company under the small business program,
10 that it was a fraud case, that it was a good case,
11 and he was hoping to have an indictment by
12 September. I remember they did a search warrant on
13 Hale's office, and that went smoothly.

14 They got some records and everything went
15 very well. He probably told me a little bit about
16 the case, but I don't remember exactly. He told me
17 the nature of the case that he was working on at that
18 time, and that escapes me at the moment. It was
19 fraud, involved getting -- deceiving the SBA, getting
20 more money than Mr. Hale was entitled to by
21 misrepresentation. That was the essence of the
22 facts.

1 Q When did you become aware of the
2 allegations made by Hale against President Bill
3 Clinton and Jim Guy Tucker and Jim McDougal.

4 A Repeat that.

5 Q When did you become aware of the
6 allegations made by David Hale against Bill Clinton,
7 Jim Guy Tucker and James McDougal.

8 A When it was reported locally in the press
9 in Little Rock.

10 Q When was that.

11 A It would have been after he was indicted.
12 I recall he was indicted in September of '93. So
13 September, October of '93.

14 Q Now, did those allegations come up at all
15 while you were acting U.S. Attorney.

16 A No. He was indicted after Ms. Casey came.
17 She was the U.S. Attorney when the grand jury
18 returned that indictment.

19 Q Did you have any conversations with
20 Mr. Hale's attorney, Randy Coleman, with respect to
21 his case, Mr. Hale's case.

22 A No, none.

1 Q Did you have any conversations with
2 Mr. Coleman with respect to the allegations by Hale
3 against the President, Bill Clinton, Jim Guy Tucker
4 and James McDougal.

5 A No, none.

6 Q When did Mr. Johnson become first
7 assistant?

8 A I believe it was in September of '93.
9 Basically what happened, somewhere there in
10 September, she, Ms. Casey, made Michael the first
11 assistant and the criminal chief, reappointed me
12 civil chief, for which I was very thankful, and I
13 went back to my civil files.

14 Q Now, did Ms. Casey know Mr. Johnson.

15 A Yes, but the extent of that I couldn't
16 comment. I know they did know each other because
17 Michael teaches a class at the law school in Little
18 Rock. Of course, Ms. Casey was a professor there,
19 was on the staff shortly before she became U.S.
20 Attorney. So she did know Michael probably from that
21 experience.

22 Q Now, did you have any conversations with

1 her about who she should appoint as the first
2 assistant or head of the criminal division.

3 A Yes, I believe I did. I think so. I think
4 so. I think what she did was, I think she talked to
5 every member of the staff individually and probably
6 discussed that topic with each employee. I believe
7 she did that. As I recall, she did that, do you have
8 any views or comments and this is your opportunity to
9 say anything and that type of thing.

10 I believe she did that with each employee.

11 Q Did you make recommendations to her with
12 respect to who she should have in certain positions?

13 A I didn't say any one particular attorney.
14 I told her Michael would be good, Sandra Cherry would
15 be good, and I may have mentioned -- I hate to leave
16 somebody out.

17 I could have mentioned more names than
18 those two, but I remember mentioning those two would
19 do a good job.

20 Q Did she present to you a list of people
21 that she was considering and then she asked you to
22 comment on them or did she ask you to make

1 recommendations to her.

2 A I think she did. With each employee, one
3 to one, she would ask any views or comments the
4 employee would care to make about who would be good,
5 who would do well as a criminal chief and first
6 assistant and, if they had any comments to make, this
7 was their opportunity to do so.

8 She probably asked them do you think
9 Michael would be accepted by the staff. I think she
10 asked every person that.

11 Q So, he assumed responsibilities as head of
12 the criminal division and first assistant sometime in
13 September.

14 A Yes.

15 Q Therefore, from that point forward,
16 Fletcher Jackson answered to him.

17 A Yes.

18 Q Is it your understanding then he assumed
19 responsibility for --

20 A Fletcher faded, as I did, faded away.

21 Q When did Fletcher start to fade away.

22 A As we say, the thing got bigger than the

1 both of us. Probably shortly after the Hale
2 indictment. And there was a huge amount of publicity
3 that began to come out. Mr. Hale was making
4 comments. Everybody was saying something. Michael
5 was Ms. Casey's primary advisor. Mr. Mackay came
6 from the department and took over the case.

7 Q Who was primarily handling the case.

8 A Well, it was Fletcher until Mr. Mackay
9 came. As Fletcher's involvement began to decrease
10 and Michael's increased in that short time frame
11 there before Mr. Mackay came from the Department of
12 Justice.

13 Q Did there come a time when you learned of a
14 second set of RTC criminal referrals relating to
15 Madison Guaranty Savings & loan.

16 A Yes.

17 Q When did you find out about that.

18 A I probably read it in the paper.

19 Q Do you recall when.

20 A It was after the fact. I'm not sure.

21 Q You were not involved in that.

22 A I was not involved.

1 Q Did you or anyone in your office have any
2 contacts with any present or former employee of the
3 White House related to criminal referral C0004.

4 A I did not, and to my knowledge, no one in
5 the office did.

6 Q What about the second set of referrals.

7 A I don't have any knowledge about that. All
8 I can answer is with regard to myself. I certainly
9 didn't.

10 Q Do you have any personal knowledge of
11 contacts between any member of the Department of
12 Justice and the White House regarding criminal
13 referral C0004.

14 A Other than the telephone call from
15 Ms. Westbrook that I told you about.

16 MR. FISHMAN: You said with the White
17 House?

18 THE WITNESS: I'm sorry. With the White
19 House?

20 BY MR. GICALE:

21 Q With members of the White House.

22 A No, none.

1 Q Do you remember any calls between
2 Mr. Hale's attorney and Mr. Kennedy from the White
3 House.

4 A No.

5 Q Did you have any conversations with any of
6 the persons listed as targets or witnesses in
7 criminal referral C0004 about the referral, including
8 James McDougal, Susan McDougal, Lisa Anspaugh, Jim
9 Guy Tucker, Stephen Smith, President Bill Clinton,
10 the First Lady.

11 A None.

12 Q Did any of the targets attempt to contact
13 you at any time.

14 A No.

15 Q Do you have any knowledge of any improper
16 handling within the Department of Justice of any
17 criminal referral relating to Madison Guaranty
18 Savings & Loan?

19 A No.

20 Q Do you have any knowledge relating to RTC
21 criminal referrals being shared with individuals
22 other than employees of the Department of Justice,

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1 the FBI or the RTC.

2 A Would you repeat that, please.

3 Q Do you have any knowledge -- read that
4 question back

5 (The reporter read the record as requested.)

6 THE WITNESS: No, I do not.

7 BY MR. GICALE:

8 Q I show you what has been marked for
9 identification as 00695 through 00714, criminal
10 referral C0004.

11 (Exhibit 00695-00714 identified.)

12 BY MR. GICALE:

13 Q Do you recall seeing this in the packet of
14 documents sent to you from the Department of Justice
15 in June or July of 1993?

16 (Witness examined the document.)

17 A I don't recall seeing it. I can't say
18 absolutely positively it was not in there, but I
19 don't remember seeing this. I have no recollection
20 of it.

21 Q Do you recall whether a referral was in the
22 packet of information received from the Department of

1 Justice.

2 A It may have been. I just don't remember,
3 to tell you the truth. I just don't remember.

4 MR. GICALE: I have nothing further at this
5 point.

6 MR. IVEY: Let's take a little break.

7 (Recess.)

8 EXAMINATION

9 BY MR. IVEY:

10 Q Good morning.

11 A Good morning.

12 Q I want to go back to some of the questions
13 that were raised by majority counsel. I wanted to
14 revisit the issue about when you were named interim,
15 acting U.S. Attorney. How did that come to pass.

16 A Mr. Banks asked me if I would be willing to
17 be the interim U.S. Attorney since he was leaving.
18 Also, Mr. Dodson, his executive assistant, was
19 leaving at the same time. I said I would. He
20 recommended to the Department of Justice that I be
21 appointed to that position, and the Attorney General
22 then did make that appointment. That's good for

1 about 120 days, I believe.

2 And then I had to go before the -- you had
3 to be sworn in. Then when 120 days expired -- we
4 didn't know who the U.S. Attorney would be yet. Then
5 the chief judge of the Eastern District of Arkansas,
6 Judge Reasoner, then, upon recommendation from the
7 Department of Justice reappointed me to continue to
8 serve as acting U.S. Attorney. That's how it
9 worked.

10 Q Who was the Attorney General at the time.

11 A I knew somebody was going to ask me that.
12 I believe there was an acting.

13 Q Do you recall if it was Mr. Stuart Gerson.

14 A Could very well have been. I am
15 embarrassed to say I can't remember who the Attorney
16 General was at that time.

17 Q I think you mentioned previously that you
18 are a career Justice prosecutor.

19 A Well, I started out as a prosecutor and
20 then eventually became involved with civil
21 litigation, but a career Department of Justice
22 attorney, yes. The civil types don't like to be

1 called prosecutors, just for the record.

2 Q I will keep that in mind.

3 A We work for a living.

4 Q You may want to go off the record for that
5 one.

6 A I was just kidding. Let's make that clear,
7 that was just a joke.

8 Q When you became acting U.S. Attorney, your
9 understanding about what had happened with the
10 referral was that it had been sent to Washington by
11 Mr. Banks.

12 A Yes.

13 Q That's reflected in the May 10 letter.

14 A Yes.

15 Q And then you received a call from you
16 believe Deborah Westbrook.

17 A It was Deborah Westbrook.

18 Q And during that conversation, she told you
19 that the request to recuse had been denied.

20 A Yes.

21 Q And that the Justice Department had also
22 reviewed the referral.

1 A Yes.

2 Q And that they had found, I think your words
3 were, no violations of federal law.

4 A Well, I -- let me clarify. I say no
5 violation of federal law. It would probably be more
6 accurate to say no prosecutable violation of federal
7 law. I guess it is possible that you could read a
8 technical violation out of the information received,
9 and I'm paraphrasing what the department found. What
10 I should say I guess is that the case had no
11 prosecutive merit.

12 Q And that was based on your reading also,
13 not only what Ms. Westbrook said but on your reading
14 of the Justice Department documents that were sent
15 back.

16 A Yes. That's what the criminal division's
17 review said, that the case had no prosecutive merit.

18 Q Now --

19 A I think I personally had a question as to
20 whether or not there was any violation at all,
21 internal check kiting, if there was a federal
22 violation, what statute would have been violated. I

1 had a question in my mind whether or not there was
2 even a violation of any statute involved.

3 Q You mentioned, what did you say, internal
4 check kiting.

5 A Internal check kiting. That's basically
6 what the criminal division's review reported, that it
7 was internal, I mean Madison Guaranty Savings & Loan
8 check kiting scheme principally involving
9 Mr. McDougal, as I recall.

10 Q I guess you are saying that typically in
11 federal prosecutions, check kiting cases that are
12 pursued by a federal prosecutor involved more than
13 one institution.

14 A That's the usual case. Again, I have been
15 out of criminal prosecutions for some time. I had a
16 question in my own mind. I am certainly no authority
17 on what the statute would be if there was a violation
18 of a statute here. I'm just telling you what my
19 thinking was.

20 Q Fair enough.

21 Now, you also were shown a March 19, 1993
22 memorandum, and I think the quote that was read to

1 you was, that I believe was written by Mr. Keeney was
2 that the Justice Department would not question a
3 decision by your office, the U.S. Attorney's Office
4 in Little Rock, not to prosecute.

5 A That's what he said, yes.

6 Q What did you interpret that to mean.

7 A Just what it said, that there were grounds
8 to decline to take any further action if that's what
9 we wanted to do. But that was our decision. In
10 other words, they were saying we are not going to
11 make this decision for you, but if you want to
12 decline further action, we feel like this is a good
13 reason, if that's your decision.

14 Q In your opinion, if the referral had
15 referenced a case that was highly prosecutable, that
16 involved major players and a significant amount of
17 money with respect to the fraud, do you think a line
18 like that would have been included in this
19 recommendation back to your office?

20 MR. GICALE: I object. It is speculation.

21 MR. IVEY: It asks for his opinion.

22 MR. GICALE: Based on what?

1 MR. IVEY: I can lay a foundation, if you
2 would like.

3 BY MR. IVEY:

4 Q Have you had any dealings with the Justice
5 Department prior to this referral.

6 A Well, sure. In the course of my
7 employment, I think maybe what you are asking me is
8 if a case had prosecutive merit, why would they say
9 it had no prosecutive merit, and I don't know of any
10 reason why they would say one thing and mean
11 another. If they said no prosecutive merit, that's
12 what their analysis was, no prosecutive merit. I
13 don't know what else I can say. I mean, I accepted
14 that for what it was.

15 Q And why did you accept that.

16 A Well, because it is their area of expertise
17 and they reviewed it and it did not look out of line
18 with what I was seeing there and what I was reading.
19 You had a man here who had already been prosecuted
20 once and acquitted. He was the principal player.

21 It was not clear to me what the loss was,
22 if there was any loss, to the institution; just

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1 juggling money from one account to another in the
2 same institution, as I recall.

3 So, what the department was saying with
4 regard to its conclusion seemed to me to be
5 consistent with the information that the department
6 had. I will just leave it at that.

7 Q I think you were also shown a report, I
8 think the Bates stamp number was 745, a report by
9 Mr. MacDougall within the Department of Justice. You
10 were read part of that. I believe it says --

11 MR. FISHMAN: That's MacDougall, not
12 McDougal.

13 MR. IVEY: Yes.

14 MR. FISHMAN: The individual who wrote the
15 fraud section is Mark MacDougall,
16 M-a-c-D-o-u-g-a-l-l. The individual named as a
17 subject or target of the criminal referral C0004 is
18 James McDougal, M-c-D-o-u-g-a-l. And, as I
19 understand it, there is no relation but I understand
20 that it may be confusing to those creating or reading
21 the record at certain points.

22 MR. IVEY: I appreciate the guidance on

1 that.

2 BY MR. IVEY:

3 Q In any event, the document said it did not
4 appear to warrant the initiation of an
5 investigation. Is that your recollection.

6 A Yes, it did say that.

7 Q What did you interpret that to mean.

8 A Just what it said, that if the case has no
9 prosecutive merit, then you certainly don't want to
10 waste your time doing any further investigation, it
11 would be a waste of time. That's the whole idea of
12 coming to some decision before you commit your
13 resources. So, I found that to be consistent with
14 the finding that the case had no prosecutive merit.
15 One goes with the other.

16 Q You were asked a lot of questions about
17 your statement about there being no federal
18 violations. What you are trying to say in essence is
19 the same thing that was said in the MacDougall report
20 and Mr. Keeney's report.

21 A Yes. I may not have expressed myself
22 clearly. Again, I had a question in my mind as to

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1 whether there was any, technical or otherwise,
2 violation. That was my own personal question.

3 It didn't matter, because the finding was
4 "no prosecutive merit," and I accepted that.

5 Q You were asked some questions as well about
6 not hearing anything about the referral prior to
7 finding out that you were going to become the acting
8 U.S. Attorney.

9 A That's true.

10 Q And you also testified that there were
11 conversations among assistants within the office and
12 that it is a small office.

13 A It is a relatively small office, yes.

14 Q Are there times within the office where one
15 assistant is handling something that is very
16 sensitive and might not, given that sensitivity,
17 discuss it with the other assistants in the office.

18 A Sure, especially if the attorney was told
19 that it was highly sensitive and to be careful about
20 talking about it. Certainly, sure.

21 Q Would you say that referral C0004 contained
22 sensitive information.

1 A I would say so, yes.

2 Q I wanted to see if I could get a little bit
3 more from your recollection about the cover letter
4 that you thought may be -- I don't want to put words
5 in your mouth -- but you thought may have been on top
6 of the package you got back from Justice.

7 A Again, I'm not sure. I have a vague but
8 not a firm memory that there was some sort of cover
9 letter or memo. Again, I cannot be sure. But it
10 didn't say much, as I recall. It just said basically
11 what Ms. Westbrook had already told me over the
12 phone.

13 Q Do you recall ever talking with anybody
14 within your office, maybe like Mr. Dodson, about
15 whether a cover memo might have been with this
16 package.

17 A No.

18 MR. FISHMAN: Mr. Dodson?

19 THE WITNESS: He wasn't there then.

20 Fletcher Jackson?

21 BY MR. IVEY:

22 Q Not Fletcher Jackson. Michael Johnson.

1 A To me the cover letter may be important to
2 somebody else, but it didn't -- it was not important
3 to me, whether there was or wasn't one, so no.

4 Q And that's because your main interest was
5 what was in the package.

6 A Well, I already knew. The lady called me
7 and told me what was going to happen, so I already
8 knew that. It came and said the criminal division's
9 report said just what she said, as far as the final
10 conclusion.

11 So, there wasn't any surprise. What we got
12 was what I had been told.

13 Q Now, you said that you spoke with Fletcher
14 Jackson and told him that you would not close the
15 case because he wanted to see if it had any relevance
16 to the Hale investigation.

17 A Yes.

18 Q Now, I believe you testified that these
19 were taken out of the vault that they were kept in
20 and given to the FBI office in September.

21 A As I recall, Fletcher sometime in September
22 took the exhibits to the RTC referral to the FBI

1 office so he could work on them there. They had some
2 extra space there in the FBI office in Little Rock.
3 They had a room, a big record room that had been used
4 in some savings and loan investigations.

5 I didn't see him take them, and I don't
6 know what all was involved, but I remember him
7 telling me that.

8 Q I take it you didn't think there was
9 anything improper about that.

10 A No. Ms. Casey was probably there by then
11 anyway. That would have been consistent with what we
12 had previously discussed.

13 Q Now, you received a letter from Ms. Lewis
14 in May of 1993?

15 A Yes.

16 Q And you hadn't heard anything about her
17 prior to that.

18 A Not on that referral. I do remember her
19 calling on another case that we were investigating
20 and prosecuting. The case had gotten to the point of
21 a plea bargain agreement. It had to do with a
22 savings and loan association in Paragould, Arkansas.

1 She did call about that. This other referral you are
2 mentioning was not mentioned in the conversation.

3 Q She called you about the Paragould.

4 A Yes.

5 Q Were you handling Paragould.

6 A No. That was being handled by Ken Stoll
7 and Pat Harris, two of our assistants. I believe it
8 was two defendants. One had already pled, had
9 entered a plea of guilty I believe already, and the
10 other one I believe they had just entered into a plea
11 agreement, but he had not gone to court and entered a
12 formal plea, as I recall.

13 Q Did you have any conversations with other
14 assistants in the office about Ms. Lewis.

15 A I remember Mr. Stoll and Mr. Harris telling
16 me, as far as the Paragould S&L case was concerned,
17 that they felt like Ms. Lewis's concerns were not
18 reasonable. And it came a little late for us to do
19 anything about them anyway.

20 Q I wonder if I could flesh that out a little
21 bit. What do you mean by that?

22 MR. FISHMAN: Before we go into that, I

1 understand the committee's oversight responsibility
2 and I understand the scope of the committee's inquiry
3 into Madison Guaranty. To the extent we are going to
4 start exploring substantive areas of investigation or
5 discussion between a regulatory agency and the U.S.
6 Attorney's Office about another matter, we should
7 probably discuss that off the record before exploring
8 it any further, just to make sure we don't
9 inadvertently intrude on matters that should not be
10 part of the public record.

11 MR. IVEY: That's fine with me. Let's talk
12 about it briefly off the record.

13 (Discussion off the record.)

14 MR. FISHMAN: I have had an opportunity to
15 discuss this with Mr. Pence, and I believe his answer
16 to your question is one that would not necessarily
17 intrude on the kinds of issues we need to be
18 concerned about. So, I will withdraw any objection
19 to the question that may have been made.

20 THE WITNESS: You want me to tell you
21 what --

22 BY MR. IVEY:

1 Q If you could just elaborate.

2 A She called and was unhappy because the plea
3 agreement did not call for a fine, but the plea
4 agreement had been executed. We would have had to
5 have reneged on it. Plus, the attorneys felt like
6 they had given consideration to the defendants, and I
7 don't remember his name, ability to pay, did not feel
8 he had much in the way of assets with which to pay a
9 fine at that point in time, that his ability to pay a
10 fine was highly questionable anyway and that they had
11 gotten the best deal that they could get on the plea
12 agreement.

13 I don't remember what the -- it did not
14 call for a fine. I don't remember what else was
15 involved. Felt like if the RTC was unhappy about
16 that, that they waited a little late to bring that
17 up.

18 Q Do you mean RTC or Jean Lewis in
19 particular.

20 A Well, either one. The RTC or Ms. Lewis or
21 anybody on behalf of RTC, that there really wasn't
22 much basis for it anyway and it was just too late.

1 We would have had to have reneged, and that is
2 something you don't want to do unless you have darn
3 good reason.

4 Q And courts are reluctant to do that
5 anyway?

6 A Yes.

7 Q Did you hear any other complaints about
8 Ms. Lewis within the office.

9 A It is hard for me to separate comments I
10 may have heard about her and what I read in the
11 newspaper. Since I did not deal with her at all
12 except one telephone conversation and one letter and
13 was not involved in criminal prosecutions, did not
14 deal with the RTC during that period of time or in
15 the years preceding that, so I can't answer. I don't
16 know.

17 Q Do you recall any complaints, and this is a
18 slightly separate area, but I will make it broader,
19 complaints about not receiving documents in a timely
20 fashion from the RTC? I mean with respect to your
21 office.

22 A I remember some of our prosecutors felt

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1 that the RTC's cooperation was not what it should be,
2 possibly just because of bureaucratic inertia. I
3 don't know. But I do remember our prosecutors, in
4 just office talk, talking about their cases, that
5 they did not particularly enjoy dealing with RTC,
6 that it was a pain.

7 MR. FISHMAN: Off the record.

8 (Discussion off the record.)

9 BY MR. IVEY:

10 Q Would this be RTC in Kansas City.

11 A Yes. I also remember -- and I can't
12 attribute this to anybody in particular -- but a
13 comment to the effect that they sometimes overdid
14 their referrals, that they referred some junk,
15 general comments to that effect, that it was like
16 dealing with a big bureaucracy, it was hard to find
17 stuff, that type of comment.

18 Q When you say "referred some junk," you
19 mean --

20 A The cases didn't really have any
21 prosecutive merit and weren't worth committing any
22 time and resources on. That's what I meant.

1 Q Were their comments with respect to
2 referral C0004 along that vein?

3 A No. I didn't even know about that until,
4 like I said, shortly before I became acting U.S.
5 Attorney, and I gave it no further thought until it
6 came back.

7 Q Now, when you talked with Ms. Casey about
8 the referral, you told her about the criminal
9 division reports that we talked about earlier.

10 A Yes.

11 Q And is it your recollection that you told
12 her essentially that the criminal division had found
13 no prosecutive merit?

14 A Yes, I did tell her that.

15 Q Did you ever see the letter she wrote
16 declining to prosecute C0004.

17 A Not before it was sent. I remember seeing
18 it in the newspaper.

19 Q When you saw it in the newspaper, do you
20 recall essentially saying that, that the Justice
21 Department had found no merit in the referral?

22 A I really don't remember how her letter

1 was -- it was a letter of declination. I remember
2 the phrasing. I don't remember the exact words
3 used.

4 Q Do you recall feeling there was something
5 misleading in the way she had worded the letter?

6 A No, I didn't see anything misleading about
7 it.

8 Q It was consistent with what you knew and
9 understood about the referral.

10 A Yes, because I knew that there had been a
11 review and a finding that it had no prosecutive
12 merit. A declination is certainly not inconsistent
13 with that.

14 Q You were asked some questions about the
15 Banks letter's reference to 302s.

16 A Yes.

17 Q That it might have been appropriate to
18 conduct some sort of limited investigation.

19 A Yes, but I don't remember seeing that
20 letter before today.

21 Q Yes, sir, I understand. I was going to ask
22 you some slightly different things, though.

1 A Okay.

2 Q Do you know what the Justice Department did
3 with respect to making its analysis of the referral.

4 A No, I do not.

5 Q But you relied on their recommendations?

6 A Yes.

7 Q And do you feel it was a reasonable
8 reliance.

9 A It seemed reasonable in light of the type
10 of transactions that were involved with that
11 referral. In other words, it didn't seem like a big
12 deal, to use that phrase.

13 Q And would you have assumed or did you
14 assume that in reaching its conclusion, the Justice
15 Department had done a thorough or solid analysis?

16 A That was my assumption. As I said before,
17 exactly what was done with regard to the review, the
18 step-by-step process, of course, I don't know, and I
19 don't want to mislead anybody, because I wasn't
20 there, I wasn't involved and I don't know. My
21 assumption was that it was a legitimate review and
22 that it was what it purported to be, a review of the

1 information presented by people that know what they
2 are doing.

3 Q You were also asked if you had done any
4 research on your own with respect to the referral. I
5 think there was a reference about case law and
6 reviewing the documents. I assume that was a
7 reference to the 300 exhibits that were attached with
8 the referral. Do you recall those questions.

9 A Yes.

10 Q At the time that you received the
11 information back from the Justice Department, you
12 were acting as U.S. Attorney for the office.

13 A Yes.

14 Q Would you say that that's a full-time job.

15 A Yes, it was.

16 Q And were there other assistants within the
17 office who had some knowledge of this matter.

18 A Fletcher Jackson had some knowledge about
19 it, I later learned.

20 Q Did you consult with Mr. Jackson about it.

21 A Yes, I did. Yes, when he came back, I
22 certainly did.

1 Q And you also had some analysis from the
2 Department of Justice with respect to that referral.

3 A Well, we had the report from the criminal
4 division concerning its review of the RTC's
5 referral. We had that.

6 Q And the criminal division has the resources
7 and the staff to do that type of analysis, to look at
8 case law and to review documents.

9 A I believe that they are fully capable of
10 making that type of analysis.

11 Q So, in drawing your conclusions, you relied
12 on Mr. Jackson and the criminal division of the
13 Justice Department.

14 A Yes.

15 Q You were asked some questions about whether
16 you had planned on sitting on the referral. Do you
17 recall that question.

18 A Yes.

19 Q And you don't recall making any such
20 statement.

21 A I did not make that statement to anybody.
22 The question was did you think about that, and I

1 answered yes, honestly, the thought crossed my mind.
2 But I didn't make that statement to anybody.

3 Q At the time you were the acting U.S.
4 Attorney and you received this package back from the
5 Department of Justice, if I'm understanding your
6 testimony correctly, you already thought that the
7 criminal division in the Department of Justice had
8 made a determination on the matter.

9 A Yes. I saw no reason to second-guess what
10 had already taken place. What, what seemed to me to
11 be more important is whether or not the information
12 in those referrals might be useful someplace else.

13 Q So, in other words, you weren't sitting on
14 anything because you thought a decision had already
15 been made with respect to that referral; isn't that
16 right.

17 A I didn't think I was. Somebody else I
18 guess might draw a different conclusion. I did not
19 perceive it that way.

20 Q And as opposed to simply sitting on it, you
21 gave it to Mr. Jackson so that he could use the
22 information for the Hale investigation.

1 A Yes. Giving credit where credit is due,
2 that was Fletcher's suggestion. He was getting into
3 this David Hale case. Mr. Hale -- there was a lot of
4 transactions involved, and he thought that the
5 information in that referral might be useful in the
6 investigation of Mr. Hale and his SBA, small
7 investment company.

8 That seemed reasonable. I think that was a
9 reasonable suggestion.

10 Q So, there was no case to sit on, just a
11 potential source of information for Mr. Jackson.

12 A That's the way I viewed it. He was going
13 to do something with the information if it led
14 anywhere. I do not perceive that as doing nothing.
15 But somebody else might.

16 Q Did you have any motive to try and block or
17 delay --

18 A No.

19 Q Let me finish the question. Did you have
20 any motive to block or delay the prosecution with
21 respect to this referral or an investigation with
22 respect to C0004.

1 A No, none whatsoever.

2 Q You were also asked about whether you had
3 ever said that the referral was highly prosecutable
4 or strong. Do you recall that question.

5 A I do, yes.

6 Q Did you ever say that.

7 A No.

8 Q Is that your view today.

9 A No.

10 Q But you do think that it would have looked
11 like sour grapes if your office had proceeded with
12 the prosecution.

13 A I think that was unavoidable. We had
14 prosecuted Mr. McDougal unsuccessfully. He was quite
15 vocal in his criticism of a political prosecution.
16 And certainly any prosecution that we had undertaken,
17 we would have encountered that.

18 Q Could that have had an impact on the jury
19 in that case.

20 A Well, sure. It could very well have had an
21 impact.

22 Q Was it thought within your office that it

1 had an impact in the first case against Mr. McDougal.

2 A Well, I'm not sure I understand what you
3 are asking me.

4 Q Was the sour grapes political issue raised
5 in Mr. McDougal's trial.

6 A The first prosecution?

7 Q Right.

8 A He certainly -- Mr. McDougal certainly made
9 those comments publicly after he was acquitted. As
10 to whether or not he publicly stated that he was
11 being prosecuted for political reasons before the
12 verdict, I don't remember. I don't remember.

13 Q You mentioned that you saw Ms. Casey's
14 recusal letter published in the newspaper. Did you
15 find that troublesome.

16 A Yes, I did.

17 Q Why is that.

18 A Well, I never did understand how it got in
19 the hands of the media. I'm certain she didn't hand
20 it over. It is a little troubling how these
21 documents got into the hands of the media, and I
22 don't know how that happened. I have no idea.

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1 Q Did you ever hear any conversations within
2 your office among assistant U.S. Attorneys that
3 Ms. Lewis might have been involved in any leaks of
4 sensitive information.

5 A I think I did. It was probably in the
6 nature of speculation. I'm not saying that either I
7 or any of our U.S. Attorneys had any knowledge as to
8 how these documents were leaked to the press. But I
9 did hear such comments, yes, but it would be more in
10 the nature of speculation.

11 Q Do you recall with respect to what
12 information those comments were made, what
13 information had turned up in the newspaper that led
14 to those comments.

15 A Well, the letter of declination.

16 Q Did that appear in the paper as well.

17 A Yes, it sure did. At what point in time I
18 don't remember. But yes, it was in the newspaper.
19 And there were other documents, and maybe some that
20 didn't involve our office, maybe some RTC documents.
21 I remember reading about those.

22 Q I believe you were asked if you found it

1 odd for there to be a recusal letter, Ms. Casey's
2 recusal letter after her letter of declination for
3 the first referral. I wanted to follow up with you
4 on that.

5 A Is that what I said? I'm trying to
6 remember what I did say.

7 Q Did you find it odd, then? Let me ask
8 you.

9 A Of course, it is two different -- she had
10 already declined on the first referral. So that had
11 nothing to do with -- she was refusing on these other
12 matters. Well, I'm not sure. Since I wasn't
13 involved, I don't know. I'm not saying if I said I
14 found it odd -- I shouldn't have said that. There is
15 no basis for that. I don't know what was going on
16 then.

17 I was not involved in the decisions. I was
18 not conferring with anybody, Ms. Casey or anybody
19 else. So, if I made that comment, I might have, I
20 misspoke myself.

21 Q I apologize if I misquoted you.

22 A I don't remember what I said, quite

1 frankly. These are matters I simply do not have any
2 information about, the declination and then followed
3 by the recusal.

4 Q The declination was with respect to
5 referral C000 --

6 A What I call the first RTC referral.

7 Q That would be the referral that the Justice
8 Department had sent back to the U.S. Attorney's
9 Office.

10 A Yes.

11 Q And essentially telling you that there was
12 no prosecutive merit to the referral.

13 A Yes. That's the one, yes.

14 Q Do you know the basis of Ms. Casey's
15 recusal.

16 A No, I don't.

17 Q Do you know if she had concerns about her
18 relationship with Jim Guy Tucker or Stephen Smith.

19 A I really don't know.

20 Q As chief of the civil division, did you
21 have any involvement in pursuing civil matters with
22 respect to S&Ls.

1 A We were never referred any civil litigation
2 with regard to a failed S&L. Most of that work was
3 contracted out by RTC to private law firms. I don't
4 believe we had any -- we had no referral for any
5 civil action.

6 Q Did you have any role in establishing
7 priorities of which financial institutions would be
8 pursued and in what order.

9 A You mean for criminal prosecution?

10 Q Right.

11 A No.

12 Q Did you have any role in that with respect
13 to civil litigation?

14 MR. FISHMAN: Generally?

15 MR. IVEY: Generally.

16 THE WITNESS: Like I said, we had no cases
17 involving, any civil cases involving efforts to
18 recover money or something of that nature, a civil
19 action of that nature concerning a failed S&L. So we
20 didn't have any such case.

21 BY MR. IVEY:

22 Q Did you ever provide any type of support

1 role for criminal cases that were being handled by
2 your office.

3 A What you might call lounge laws, somebody
4 come by and might want a second opinion or a third
5 opinion, nothing more than that.

6 Q All right.

7 MR. FISHMAN: Off the record.

8 (Discussion off the record.)

9 BY MR. IVEY:

10 Q Did Ms. Casey ever mention or discuss any
11 concerns about her recusal with you.

12 A You mean before she recused?

13 Q Before she recused.

14 A No.

15 Q Did you ever hear anything about her
16 concerns about recusal before she recused.

17 A Before she recused, no.

18 Q What about after.

19 A I believe I did hear a comment that she had
20 made one time that Ms. Westbrook had suggested the
21 recusal. That's really about it.

22 Q Did you ever hear any concerns about

1 Mr. Hale's refusal to make a proffer as to what he
2 knew before recusal took place.

3 A No, I did not, no.

4 Q Were you privy or knowledgeable about any
5 of the negotiations between your office and Mr. Hale
6 with respect to his plea.

7 A No. I had returned to anonymity.

8 MR. IVEY: That's all for me.

9 EXAMINATION

10 BY MR. GICALE:

11 Q A couple questions. The words you used,
12 that the case had "no prosecutive merit," those are
13 your words?

14 A Yes.

15 Q Those were not the words in the memo that
16 earlier you were shown.

17 A I think you are right. That's my
18 phrasing.

19 Q You also indicated that your recollection
20 of it was that the referral referred to check kiting;
21 correct.

22 A Yes.

1 Q Was that the only allegation in the
2 referral with respect to criminal activity.

3 A I'm not sure if that was the only. I
4 believe that was the principal element of the
5 transactions. I'm not going to say that was the
6 only. It was my impression that that was the
7 principal characteristic.

8 Q I'm going to show you once again what has
9 been marked for identification as 006695 through
10 006714, and specifically refer you to what is labeled
11 on that document as page 5, page 5 on the left-hand
12 side, page 5 of the original document. There is a
13 page 7 in the upper right-hand corner which is a fax
14 page.

15 If you could direct your attention to the
16 fourth paragraph of that page.

17 A Okay.

18 MR. FISHMAN: Are you asking him --

19 MR. GICALE: I'm directing his attention to
20 that paragraph and ask him to read that paragraph.

21 MR. FISHMAN: To himself?

22 MR. GICALE: Yes.

1 (Witness examined the document.)

2 THE WITNESS: I have read it.

3 BY MR. GICALE:

4 Q Does that refresh your recollection as to
5 the kinds of criminal allegations that were in the
6 complaint? I'm sorry, not kinds. As to the
7 allegations made in the complaint.

8 MR. FISHMAN: I object to the form of the
9 question. He didn't testify as to what was in it.
10 He said what his impression was at the time. If you
11 are asking him if that's what the document says,
12 that's one thing. But I don't think you have fairly
13 characterized his previous responses.

14 MR. GICALE: All right.

15 BY MR. GICALE:

16 Q In that paragraph, for instance, it lists
17 diversion of loan proceeds.

18 A Yes, it does say that.

19 Q Do you recall whether or not that was one
20 of the allegations.

21 A No, I did not recall that. In the document
22 that you have asked me to read, I don't remember

1 reading that before. If I did, it just escapes me.

2 I don't think I have. But yes, that document,
3 though, I have read it and it does refer to --

4 Q Something more than check kiting.

5 A Yes, it does.

6 Q I refer you to page 10 of this document,
7 which would start with a 2/19/85 date on the
8 left-hand side. I don't have the Bates number, but
9 this is inclusive in this range 006695 through
10 006714.

11 Just to identify the page, it says "Madison
12 Guaranty Savings & Loan criminal referral August 31,
13 1992, page 10" on the left-hand side. Do you see
14 that.

15 A Okay.

16 Q I will refer you to the 2/19/85 entry.

17 A I see it.

18 Q It is the first paragraph.

19 A I'm sorry. The first paragraph. All
20 right.

21 (Witness examined the document.)

22 I have read it.

1 Q That first paragraph, 2/19/85, deals with a
2 check number 611 for 95,665.62 that was issued to
3 Madison Guaranty Savings & Loan for principal and
4 interest payments in five McDougal-related loans;
5 correct.

6 A Yes.

7 Q What it claims in this document is that
8 this check cleared from loan proceeds of a \$351,000
9 deposit to the McDougals' account of 2/22/85 and that
10 the proceeds were designated purchase and renovation
11 of home for the McDougals. It further goes on to
12 state that over 100,000 of the proceeds were
13 ultimately diverted for the purpose of bringing other
14 debt current.

15 A Yes, it says that.

16 Q Now, in terms of the criminal banking fraud
17 statutes, is that one dealing with a diversion of
18 loan proceeds.

19 A You are asking me if that would constitute
20 a violation?

21 Q Right.

22 A I don't know. I will just be honest with

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1 you. I don't know.

2 Q What they are alleging here is that moneys
3 designated for a loan, the representation here is
4 made, I have read it for you, but in sum, loan
5 proceeds were used for other purposes; correct.

6 A Yes.

7 MR. FISHMAN: Can we not argue with the
8 witness here. The witness has said he doesn't recall
9 reading the document. He has testified that he
10 doesn't know whether standing alone, that particular
11 entry would constitute a crime or not. He
12 acknowledges that you have read it correctly.

13 MR. GICALE: Now he has had an opportunity
14 to read it.

15 THE WITNESS: Yes, I have read it.

16 BY MR. GICALE:

17 Q Can you say with certainty today reading
18 that paragraph with that allegation in there that
19 that had no prosecutive merit?

20 MR. FISHMAN: Again, I will have to object
21 to your characterization. He did not testify that he
22 read this and that the case had no prosecutive

1 merit. I just want the record to be clear. You are
2 asking the question, I know, but I think the
3 implication you are making is that it is different
4 than what he has testified about before.

5 MR. GICALE: I understand what you are
6 saying on the record. He did testify at one earlier
7 stage that he believed he received a copy of the
8 referral in the package. He wasn't certain. That
9 was early on in his testimony.

10 THE WITNESS: It may have been included.
11 But again, I don't think I read it.

12 MR. IVEY: What was the question? Is there
13 a question pending at this point?

14 MR. GICALE: I will strike whatever the
15 last question is and I will go through this again.

16 BY MR. GICALE:

17 Q You stated earlier that you did have an --
18 that you believed you did receive a copy of the
19 referral.

20 A It may have been -- of course, the office
21 did receive the referral, of course, at one point.
22 You are asking me was it included in the package of

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1 documents that was returned to me in June or July of
2 '93. It may have been. I'm not sure. I feel
3 strongly that at that point in time, if it had been
4 included, I did not sit down and read it word for
5 word. I was more interested in what the department
6 had come up with.

7 Q Well, the department -- I'm going to refer
8 you to document 007041, the memo that you identified
9 from Mark MacDougall to Gerald McDowell.

10 A Yes.

11 Q In it, it said that it relied, referring to
12 the last paragraph of the first page, that it relied
13 on this referral; is that correct.

14 A Let's see.

15 (Witness examined the document.)

16 Yes, it lists the RTC criminal referral
17 number C0004 as being included in the information
18 reviewed. Of course, that's what they were supposed
19 to do. Yes, they should have read that.

20 Q But you did not bother to read it when you
21 read this.

22 A No. I do not believe that I read the RTC

1 referral if, in fact, it had been included in the
2 materials received from the Department of Justice.
3 I'm not sure it was. But if it was there, I don't
4 think I read it, because I was looking for the bottom
5 line. The RTC had submitted this information. I
6 didn't want to go over that again at that particular
7 time. I wanted to know what the department had
8 found. That was what I was most interested in.

9 Q So, you did not bother to look at the
10 document that the department used to come to a --

11 A I did not go back and review the -- I
12 certainly did not review the exhibits. I can tell
13 you that for certain, the exhibits to the referral.

14 Q Did you know that the department did not
15 review the exhibits.

16 A I really don't know what the department
17 reviewed.

18 Q The first --

19 A Other than what is mentioned in the report
20 there as the materials reviewed.

21 Q Wouldn't that be a source of concern to you
22 when you look at the last paragraph of the first page

1 and you find out that the department didn't even
2 bother to review the exhibits.

3 A Not necessarily, not necessarily.

4 Q Were you aware of the fact that the
5 department did not bother to consult with the FBI
6 agents involved in the case?

7 A I did not know at that point in time
8 whether the department had consulted FBI agents. I
9 don't know that the FBI agents would have known
10 anything at that point in time because I don't know
11 if they had done anything.

12 Q Did you know whether or not the FBI had
13 received a copy of the original criminal referral.

14 A As I recall, it was typical, maybe not
15 necessarily in every case -- in this case, I can't
16 say for sure. But it was typical when the RTC made a
17 referral to the U.S. Attorney's Office, that the same
18 thing would be sent to the local FBI. That happened,
19 as I understand it, frequently. Whether or not it
20 happened in this case, I don't know.

21 Q Again, referring to the last paragraph of
22 the first page, that outlines what the department

1 reviewed before it came to its conclusion; correct.

2 A Yes.

3 MR. FISHMAN: When you say "the
4 department," the FBI is part of the department.
5 Mr. Pence is part of the department. I think we
6 should avoid characterizing by institution.

7 MR. GICALE: I will be more specific.

8 BY MR. GICALE:

9 Q The memo, the first page of the document,
10 last paragraph, and this again is a memo from Mark J.
11 MacDougall, M-a-c-D-o-u-g-a-l-l, to Gerald McDowell.
12 That indicates in that paragraph the documents that
13 were reviewed.

14 A Yes, it does.

15 Q Now, nowhere in there does it state that
16 the exhibits were reviewed.

17 A Exhibits are not mentioned.

18 Q Nowhere in it does it state that there was
19 any consultation with the FBI.

20 A That is not mentioned.

21 Q Nowhere is it stated that there is any
22 consultation with the U.S. Attorney's Office in

1 Little Rock?

2 A Well, it mentions -- I think you are
3 right. It does mention a letter from Mr. Banks. But
4 I don't think that's what you mean by "conferring."

5 Q I will also refer you to the last page of
6 this document in the recommendation section. This is
7 at page 00 -- this is document 007045. I am going to
8 refer you to the last paragraph where it says "based
9 solely upon available information." Do you see those
10 words.

11 A Yes, I do. "Based solely upon available
12 information," yes.

13 Q Were the exhibits, the 300 exhibits, would
14 you have made those available to the Department of
15 Justice if they wanted to review them.

16 A Well, sure.

17 MR. FISHMAN: Again --

18 BY MR. GICALE:

19 Q To Mr. McDowell or Mr. MacDougall.

20 A Well, certainly. If we had something they
21 requested, sure, we would give it.

22 Q They were available to them if they wanted

1 to look at them; is that correct.

2 A Yes, they could have been provided had they
3 found that they needed to see them.

4 Q If they had questions of a particular
5 assistant U.S. Attorney from your district, you would
6 have made that assistant U.S. Attorney available?

7 MR. FISHMAN: For the record, there was a
8 recusal request pending.

9 MR. GICALE: That's on the record.

10 BY MR. GICALE:

11 Q You would have made an AUSA available if
12 they wanted to talk to them; correct.

13 A Very reluctantly, because Mr. Banks had
14 said we shouldn't be involved in this. I mean we
15 would have not wanted to do that until there was a
16 decision on whether or not we could do that.

17 Q All right. Were the FBI agents available
18 for Mr. McDowell and Mr. MacDougall to talk to.

19 A I don't know. I don't know. I have no
20 reason why they wouldn't be. But I cannot answer
21 that question definitively. Again, I was not -- that
22 review was made in the Department of Justice in

1 Washington.

2 Q In any event, other than reviewing the
3 memorandum from Mr. MacDougall, you did not compare
4 the memorandum to the original referral.

5 A No, I did not.

6 Q You did not look at the exhibits that came
7 with the referral.

8 A No, I did not.

9 Q And in general, you deferred to Mr. Jackson
10 as to what to do further on this case; correct.

11 A He made a suggestion. I think it was a
12 good suggestion, and I accepted it, yes.

13 Q And you did not decline at this point the
14 case.

15 A No, we didn't do any letter of declination
16 at that point, no, sir, we did not.

17 Q You kept it open because Fletcher Jackson
18 thought there might be some useful purpose --

19 A Yes.

20 Q -- in the information that was part of this
21 referral; correct.

22 A Yes, that's true. Again, I must say, we

1 had prosecuted Mr. McDougal once unsuccessfully.
2 That was one of the reasons Mr. Banks wanted to
3 recuse. If we had wanted to do anything, we still
4 have that problem that you would have to face with a
5 second prosecution of Mr. McDougal.

6 Q I understand that. That doesn't go to the
7 question of whether or not there is evidence of a
8 federal crime?

9 A That's true. That's true. That would have
10 to do with I guess whether or not you wanted to take
11 the case to court, assuming there was enough evidence
12 to do so. That would come into the final decision, I
13 suppose, yes.

14 Q And there would be a question, perhaps, of
15 resources as well.

16 A Yes.

17 Q Were you aware of other bank fraud -- were
18 there other bank fraud cases in your office while --
19 the time you were acting U.S. Attorney.

20 A Yes, there were.

21 Q Did some of those cases involve loans from
22 banks where the proceeds were used for purposes other

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1 than the intended purpose?

2 MR. IVEY: Could I ask --

3 THE WITNESS: I don't know. I don't
4 remember. I know we had bank fraud cases as to the
5 underlying offense. The evidentiary detail I just
6 don't remember.

7 MR. GICALE: I have nothing further at this
8 point.

9 MR. IVEY: I don't have anything else
10 either.

11 (Whereupon, at 12:50 p.m., the deposition
12 was concluded.)
13

14 -----
15 RICHARD M. PENCE
16
17
18
19
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21
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

111

I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey
Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 14, 1996



U.S. Department of Justice

Office of the Deputy Attorney General

Associate Deputy Attorney General

Washington, D.C. 20530

February 18, 1993

MEMORANDUM TO: John C. Keeney
Acting Assistant Attorney General

FROM: Douglas N. Frazier ~~XX~~
Associate Deputy Attorney General

RE: Recusal by the U.S. Attorney's Office
for the Eastern District of Arkansas on a
Resolution Trust Corporation Referral

The attached recusal package is forwarded for your review
and recommendation. Thanks.

Attachment

GAC 000393

U.S. Department of Justice

Criminal Division

JUN 11 1993

Type: 3/2/93

Assistant Attorney General

Washington, D.C. 20530

MAR 19 1993

MEMORANDUM

TO: Douglas M. Frazier
Associate Deputy Attorney General

FROM: John C. Keeney *ESK by LAK*
Acting Assistant Attorney General

SUBJECT: Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral.

The attached recusal package was forwarded for review from your office on February 18, 1993. We have reviewed the material in the package and have concluded that there is no identifiable basis for recusal by the United States Attorney. Further, we would not question a decision by the United States Attorney to decline further substantive action on the referral. A copy of the Fraud Section's memorandum summarizing our review is attached for your use and, should you decide it is appropriate, for forwarding to the United States Attorney's Office in Little Rock.

Attachments

Records
Section Chron.
Exec. Sec.
Keeney
Urgenson
McDowell
Carver
Branch

1-1000-1000-1000
 1-1000-1000-1000

1993 FEB -1 10 30

OFFICE OF LEGAL COUNSEL

January 27, 1993

Ms. Donna Henneman
 Office of Legal Counsel
 Executive Office for U.S. Attorneys
 Main Justice Building
 Washington, D.C. 20530

Re: RTC Referral C0004

Dear Ms. Henneman:

This is a follow-up to my letter of October 16, 1992, which I believe was previously sent to you. If not, a copy is enclosed.

RTC officials have again contacted this office following an FOIA request upon them by some member of the Little Rock media.

RTC's contact with us was to determine the position of this office regarding their response to the FOIA request. Specifically, RTC wanted to know if a production of referral documents would affect our investigation.

The purpose of this letter is to clarify any possible confusion.

First, we have no investigation ongoing. Second, we have informed RTC of this and further suggested they should follow the appropriate FOIA law in responding to the request. I believe this RTC inquiry makes it appropriate for me to advise you as to the present status of the above referral.


Our position as related in the enclosed letter of October 16 is self-explanatory. As previously indicated, it seems prudent that a limited preliminary investigation of allegations pertinent to Mr. and Mrs. McDougal and Ms. Anspaugh should be considered. The taking of 102's from these individuals should determine whether there is merit to substantiate further investigation.

Ms. Donna Zimmerman
Page 1
January 27, 1993

I believe this office has a conflict of interest in conducting an investigation or presenting an indictment against these individuals. Previous prosecution of Mr. McDougal and two other defendants resulted in a not guilty verdict. Several allegations suggesting political prosecutions were made during the trial. These were patently false but a second investigation/prosecution could easily give the appearance of inappropriate motivation by this office.

I would appreciate and expect that any decision of investigation, indictment, prosecution or declination be the responsibility of the Department of Justice. I have resigned my position as United States Attorney effective March 1, 1993, and am separating service with the Department of Justice that date. I will be happy to transfer the RTC workpapers or make them available for your review.

Best Regards,


CHARLES A. BANKS
United States Attorney

CB/bv



Main Justice Building, Room 1019
 1001 & Pennsylvania Avenue, N.W.
 Washington, D.C. 20530

(201) 514-2000

FEB 9 1993

MEMORANDUM FOR: Stuart M. Gerson
 Acting Attorney General

THRU: Douglas N. Frazier
 Principal Associate Deputy Attorney General

FROM: Anthony C. Moscato (S)
 Director

SUBJECT: Recusal by the United States Attorney's office
 for the Eastern District of Arkansas on a
 Resolution Trust Corporation Referral

The attached letter from United States Attorney Charles A. Banks, Eastern District of Arkansas, asserts his office has a conflict of interest in pursuing a possible prosecution of a Mr. and Mrs. McDougal and a Ms. Anspaugh for alleged check fraud, check kiting, misuse of position, bank fraud, forgery and conspiracy. Mr. Banks requests that the Department of Justice determine the prosecutive merit of this matter. The United States Attorney's office has previously prosecuted Mr. McDougal and two other individuals in late 1988 on similar charges and they were found not guilty. The Resolution Trust Corporation (RTC) has forwarded new and additional information to the United States Attorney's office on September 2, 1992, for consideration. As stated above, the second referral involves the same patterns of activity for which these individuals have been found not guilty, but present different transactions.

Mr. Banks believes his office should not be involved in the prosecutorial determination because it may give rise to the appearance of inappropriate prosecutorial motivation by his office. The matter may involve President and Mrs. Clinton as witnesses. Mr. Banks states in his letter to this office that the RTC's second referral of September 2, 1992, merits a "limited preliminary investigation" of the allegations contained therein.

On October 16, 1992, Mr. Banks informed the RTC by letter (attached) that his office would not participate in an investigation into this matter prior to November 1, 1992. He

-2-

stated further "[t]hat after such a lapse of time the insistence for urgency in this case [by the RTC] appears to suggest an intentional or unintentional attempt to intervene into the political process of the upcoming presidential election."

It is our understanding that subsequent to Mr. Banks' October 1992 response, the RTC contacted the United States Attorney's office regarding a Freedom of Information Act request it received from the media regarding this matter. The RTC inquired how release of any information may affect the investigation. Mr. Banks related to the RTC that there was no ongoing investigation into this matter and advised the RTC to follow "the appropriate FOIA law in responding to the request" (see letter to this office). Mr. Banks has resigned as United States Attorney effective March 1, 1993.

Also attached are copies of Urgent Reports prepared by this office dated October 7 and 20, 1992, notifying the Department that the RTC referred this matter to the United States Attorney's office. The RTC referral itself is also included.

MATTER SHOULD REMAIN IN USAO: _____

MATTER AND FILES SHOULD BE REFERRED TO: _____

OTHER: _____

Stuart M. Gerson
Acting Attorney General

Date

Attachments _____

ACM:DCW:EXM:sj;2/5/93
Robert/Misc/BANKS.MEM

U.S. Department of Justice

Washington, D.C. 20530

MEMORANDUM

TO: GERALD E. MCDOWELL
CHIEF/
FRAUD SECTION

FROM: MARK J. MCDUGALL *[Signature]*
TRIAL ATTORNEY

RE: RESOLUTION TRUST CORPORATION CRIMINAL REFERRAL NO. C0004,
DATED AUGUST 31, 1992, NAMING JAMES B. MCDUGALL, SUSAN H.
MCDUGALL AND LISA ANSPAUGH

DATE: FEBRUARY 23, 1993

This memorandum responds to your request that a review of the captioned criminal referral be undertaken and a preliminary recommendation made regarding further investigation and prosecution. The referral names JAMES B. MCDUGALL (an officer, director and shareholder of the former Madison Guaranty Savings & Loan of Little Rock, Arkansas), SUSAN H. MCDUGALL (a director and shareholder of Madison Guaranty and the wife of James B. McDougal) and LISA ANSPAUGH (a business associate of the McDougals) as persons suspected of criminal violations. Ref. at 2,3 and 4. The author of the criminal referral, Laura Jean Lewis (Criminal Investigator), also identifies Governor (now President) BILL CLINTON, HILLARY RODHAM CLINTON and Arkansas Lieutenant Governor (now Governor) JIM GUY TUCKER as witnesses. Ref. at 18. Further, the author of the referral makes allegations concerning former Senator J. WILLIAM FULBRIGHT but does not name Fulbright among the persons suspected of criminal violations. Ref. at 7-8, 12 and 14.

A. SCOPE OF REVIEW

In preparing this memorandum, the following documents were reviewed: (1) RTC Criminal Referral No. C0004, dated August 31, 1992, (2) Letter dated September 1, 1992 from L. Richard Iorio, RTC Field Investigations Officer, to Charles A. Banks, United States Attorney for the Eastern District of Arkansas, (3) Letter dated October 16, 1992 from Charles A. Banks to Don Pettus, Special Agent in Charge, Federal Bureau of Investigation/Little Rock Field

GERALD E. MCDOWELL
February 23, 1993
Page 2

Office, and (4) Letter dated January 27, 1993 from Charles A. Banks to Donna Henneman, Office of Legal Counsel/Department of Justice. None of the transactional documents described in the referral were provided or reviewed. Accordingly, all references in this memorandum to factual allegations or claims are based solely on statements included in the referral.

B. CRIMINAL VIOLATIONS ALLEGED

The author of the referral cites conspiracy (18 U.S.C. § 371), misapplication (18 U.S.C. § 657) and bank fraud (18 U.S.C. § 1344), as suspected violations. Ref. at 1.

C. SUMMARY OF FACTUAL ALLEGATIONS

According to the referral, James and Susan McDougal were shareholders and directors of Madison Guaranty Savings and Loan of Little Rock, Arkansas. James McDougal is also identified as an officer of the institution. The extent of the McDougals' equity interest in Madison Guaranty and the office or offices held by James McDougal are not specified in the referral. Lisa Anspaugh is identified as a business partner of Susan McDougal who assisted Ms. McDougal in bookkeeping for various business entities. While no specific information is provided, the facts alleged in the referral suggest that the McDougals were also active in real estate development at the time of their association with Madison Guaranty.

The referral is focused on the activity in the demand deposit accounts maintained at Madison Guaranty by the McDougals and a group of business entities allegedly under their control during the period February 1984 through July 1987. The author of the referral alleges that various transfers of funds among these accounts, often involving the creation or funding of overdrafts, constituted criminal activity. The author specifically cites "unauthorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud". Ref. at 5.

In support of these allegations, the author of the referral describes some 76 banking transactions, nearly all involving the making, presentation or payment of checks by one of the McDougals or by business entities associated with the McDougals. Ref. at 6 - 17. Based solely on this information, it would appear that the McDougals regularly issued checks on Madison Guaranty accounts with insufficient funds. Once payment was made on these checks, the resulting overdraft would often be funded by a check drawn on another McDougal account at Madison Guaranty, which frequently

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created yet another overdraft in the second account. Notations on some of the checks suggest that they reflected loans from one entity under the control of the McDougals to another or to one of the McDougals individually.

The referral further suggests that many of the checks bearing the signature of one of the McDougals were, in fact, signed by the other McDougal or by Lisa Anspaugh. The referral cites no evidence, however, that any instruments were executed in the name of an authorized signer without permission. The referral further notes a check in the amount of \$3,000, drawn on a personal account of Mr. and Mrs. McDougal and dated April 4, 1985, which was made to the order of the "Bill Clinton Campaign Fund". This account allegedly carried an overdrawn balance at the time the check was written which continued for approximately 30 days. Ref. at 11. On the same date a second check in the amount of \$3,000, payable to Madison Guaranty, was drawn against one of the McDougals' business accounts. Ref. at 6. Other than the alleged overdrafts, the significance of these checks to any theory of criminal activity is not clear. In addition, in several instances, the author of the referral alleges that \$15.00 overdraft fees were charged by Madison Guaranty to McDougal accounts but were subsequently cancelled.

The author of the referral also alleges that, "the McDougal's [sic] clearly diverted funds from their [Madison Guaranty] home purchase and improvement loan of \$351,502, funded in 2/85, for other purposes". Ref. at 7. The referral specifically alleges that more than \$100,000 was "diverted" to the repayment of other loans then due from the McDougals to Madison Guaranty. Ref. at 7 and 10. No evidence is offered, however, that any false statement or entry was made by either of the McDougals or Ms. Anspaugh in connection with the home loan or that the improvements to be done on the home were not completed.

D. ALLEGATIONS RELATING TO CLINTONS AND FULBRIGHT

The author of the referral lists President Clinton and Hillary Rodham Clinton as the first two of six "...witnesses who might have information of the suspected violation". Ref. at 18. No factual claims can be found in the referral to support the designation of Mr. or Mrs. Clinton as witnesses.

Other than the campaign contributions, cited above, the referral simply identifies the Clintons as among, "[t]hose who allegedly stood to gain the most from these numerous and questionable inter-account transactions". Ref. at 5 and 17. This claim is based upon the implication by the author of the referral that the Clintons may have invested in one or more real estate ventures undertaken by the McDougals. Ref. at 5. Citing newspaper

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references, the author also speculates concerning a \$25,000 check issued by one of the McDougal entities in March 1985, stating that "...this could have been the time frame in which Whitewater (the McDougal business entity) was conducting transactions regarding the house that was allegedly purchased and subsequently sold by Ms. Clinton". Ref. at 13. No other information regarding this speculation is contained in the referral.

Similarly, several references are found in the referral to former Senator J. William Fulbright as a principal of a corporation named "Earth Movers, Inc." Ref. at 7-8, 12 and 14. The referral describes two checks drawn against McDougal accounts in April and May, 1985, totalling \$50,000, which were made or endorsed to the order of Earth Movers, Inc. One of these checks, in the amount of \$30,000, was issued by one of the McDougal entities to James McDougal, endorsed by McDougal to Earth Movers, then used by Earth Movers to purchase a Madison Guaranty cashier's check. The referral states that the \$30,000 cashier's check had not been located. Other than creating or increasing overdrafts in the subject accounts, facts suggesting the significance of these checks or the implied involvement of Fulbright in the McDougals' financial affairs are not provided in the overdraft.

E. ANALYSIS

The referral provides substantial factual support for the assertion that Mr. and Mrs. McDougal's conduct may have constituted a breach of fiduciary duty, abuse of position, and self-dealing. The referral does not provide, however, factual allegations sufficient to establish the elements of any of the criminal statutes used in the prosecution of bank fraud cases (18 U.S.C. §§ 215, 656, 657, 1005, 1006, 1014, 1344 or 1956).

The author of the referral, for example, repeatedly alleges "check kiting" on the part of the McDougals. Check kiting involves the use of accounts at two or more financial institutions to obtain interest-free loans by taking advantage of the time required to complete the check-clearing process. The conduct described in the referral, however, is almost fully limited to the issuance and deposit of checks, drawn on accounts with insufficient funds, within Madison Guaranty. While the issuance of such "bad checks" may constitute a violation of state law, it is generally outside the scope of Federal prosecution.

Moreover, the referral does not include allegations of conduct suggesting a level of criminal intent necessary to satisfy that element of any of the principal Federal bank fraud statutes. Misapplication of funds, (18 U.S.C. §§ 656 or 657), limited to bank insiders, requires that the act be done "willfully", defined as

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voluntarily and purposely, with the specific intent to disobey or disregard the law. Fifth Circuit Pattern Jury Instructions at 51. The general bank fraud statute (18 U.S.C. § 1344) requires that a scheme or artifice be executed in an effort to defraud the institution "knowingly", defined as voluntarily or intentionally, not because of mistake or accident. Fifth Circuit Pattern Jury Instructions at 49. The false entry statutes (18 U.S.C. §§ 1005 and 1006), also limited in scope to bank insiders, require that the false entry be made "with intent to defraud" the financial institution, defined as the intent to cheat or deceive the bank. Fifth Circuit Pattern Jury Instructions at 130.

The absence of facts establishing criminal intent on the part of the McDougals argues persuasively against the initiation of a criminal investigation. Further, the referral does not claim that any specific loss to the institution resulted from the McDougal's checking account activity. Ref. at 19. The payment of checks drawn against deficient balances and the waiver of overdraft fees are common, if improper, accommodations regularly extended by banks to substantial customers. The referral does not allege that this account activity was not correctly reflected on the books and records of Madison Guaranty or in reported to Federal regulatory agencies.

It should also be noted that James B. McDougal was apparently indicted, tried and acquitted in 1988 or 1989 in connection with his involvement with Madison Guaranty. Ref. at 2; Letter from Charles A. Banks, United States Attorney, to Don R. Pettus, Special Agent in Charge, dated October 16, 1992. No details relating to the previous prosecution of McDougal have been provided.

Finally, no facts can be identified to support the designation of President Bill Clinton, Hillary Rodham Clinton or Governor Jim Guy Tucker as material witnesses to the allegations made in the criminal referral.

F. RECOMMENDATION

Based solely upon available information, and in light of applicable law and current Fraud Section standards for prosecution, the conduct of James B. McDougal, Susan H. McDougal and Lisa Anspaugh as described in the criminal referral does not appear to warrant the initiation of a criminal investigation.



RESOLUTION TRUST CORPORATION

Resolving The Crisis
Restoring The Confidence

May 4, 1993

The Honorable Richard M. Pence
United States Attorney
Eastern District of Arkansas
U.S. Post Office and Courts Building
600 W. Capitol, Room 331
P.O. Box 1229
Little Rock, Arkansas 72203

Re: #7236 Madison Guaranty Savings & Loan
Little Rock, Arkansas - In Receivership (11/29/90)
CRIMINAL REFERRAL NUMBER C0004

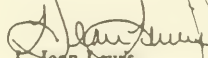
Dear Mr. Pence:

On September 1, 1992, the above captioned criminal referral was submitted to your office by the Resolution Trust Corporation's ("RTC") Kansas City Office of Investigations. On December 15, 1992, RTC Kansas City Investigations received a letter from FBI Special Agent in Charge ("SAC"), Don K. Pettus, acknowledging receipt of the referral and directing any further inquiries to Assistant United States Attorney Floyd Mac Dodson. However, it is my understanding that Mr. Dodson has recently left the U. S. Attorney's office, and this letter is therefore being directed to you.

Prior referrals submitted simultaneously to both the U.S. Attorney's Office and the FBI have generated responses advising this office of either declination of prosecution, or that a case has been opened on the basis of the referral. To date, the RTC Kansas City Office of Investigations has received no further correspondence regarding the aforementioned referral. In order to update RTC Investigations files, a written response as to the current status of this referral would be appreciated.

Should you have any questions, or require additional information, please do not hesitate to contact either myself at (816) 968-7237, Supervisory Investigator Lee Ausen at (816) 968-7243, or Field Investigations Officer L. Richard Iorio at (816) 968-7212.

Very truly yours,


L. Jean Lewis
Criminal Investigator

4900 Main Street, Suite 200, Kansas City, Missouri, 64112, (816) 531-2212

MC0829

FOCUS II

U.S. Department of Justice

United States Attorney

Eastern District of Arkansas

May 20, 1993

Little Rock, Arkansas 72201

Ms. L. Jean Lewis
Criminal Investigator
Resolution Trust Corporation
4900 Main Street, Suite 200
Kansas City, MO 64112

Dear Ms. Lewis:

Reference is made to your letter of May 4, 1993. Former U.S. Attorney Charles A. Banks determined that this office has a conflict of interest with conducting an investigation or prosecuting any criminal charges concerning this matter.

The previous prosecution by this office of James McDougal, former president of the institution, and two other persons resulted in not guilty verdicts. Allegations suggesting a politically motivated prosecution were made during and after the trial.

Considerable media attention was given to such allegations.

These allegations were entirely groundless. However, Mr. Banks felt that a second investigation/prosecution could give the appearance of inappropriate motivation. Consequently, this matter was referred to the Office of Legal Counsel, Executive Office for U.S. Attorneys, U.S. Justice Department, Washington, D.C. 20530.

I have not heard from that office, and I do not know the status of the RTC referral. Please contact the Office of Legal Counsel, telephone number 202-514-2041, for information regarding the current status of this matter.

Yours truly,

Richard M. Pence, Jr.
RICHARD M. PENCE, JR.,
United States Attorney

RP/lc

730 - Kansas City Consolidated Office

CRIMINAL REFERRAL FORM

CRIMINAL REFERRAL # C0004

1. NAME AND LOCATION OF FINANCIAL INSTITUTION

Name/:	MADISON GUARANTY SAVINGS & LOAN
Locations	16TH AND MAIN, P.O. BOX 1583
(Street/City/State/Zip)	LITTLE ROCK, ARKANSAS 72206

CERTIFICATE NUMBER:

If activity occurred at branch office(s), please identify:

2. ASSET SIZE OF FINANCIAL INSTITUTION: \$118,855,000

1. APPROXIMATE DATE AND DOLLAR AMOUNT (PRIOR TO ANY ALLOWANCE FOR RESTITUTION OR RECOVERY) OF SUSPECTED VIOLATION:

Date: (Month/Day/Year) Time frame between 12/84 and 5/85
Amount: Estimated at \$350,000 to \$1,000,000

1. SUMMARY CHARACTERIZATION OF THE SUSPECTED VIOLATION. Check appropriate box(es)

	Shirley, Virginia	X	Black, Mary	E	Black, John
	John, Virginia	X	Black, John	E	Black, John
X	Black, John		Black, John	E	Black, John

Applicable Section(s) of the U.S. Code:

[illegible]

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5. THIS MATTER IS BEING REFERRED TO:

FBI, Little Rock, Arkansas
U.S. Attorney, Eastern District, Little Rock, Arkansas

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME: (First/MI/Last) McDougal, James B.
ADDRESS: (Street/City/State/Zip) Current Address Unknown
DATE OF BIRTH: (Month/Day/Year) Unknown
SOCIAL SECURITY NO: Unknown

b. Relationship to the financial institution: (Check all applicable blocks)

<input checked="" type="checkbox"/> Officer	<input type="checkbox"/> Employee	<input type="checkbox"/> Member	<input checked="" type="checkbox"/> Shareholder	<input type="checkbox"/> Director
<input checked="" type="checkbox"/> Loan Officer	<input type="checkbox"/> Agent	<input checked="" type="checkbox"/> Borrower	<input checked="" type="checkbox"/> Associate	<input checked="" type="checkbox"/> Volunteer

c. Is person still affiliated with the financial institution:

☐ Yes ☒ No

If No, terminated ☐ , resigned ☒ . Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

McDougal resigned from the Board of Directors in December 1985; however he remained active in the Association's day to day business. He was removed from the Association when it was placed in Conservatorship by the RTC in 2/89.

d. Prior or related referrals:

☒ Yes ☐ No

If Yes, please identify.

McDougal was indicted, tried and acquitted in 1989 on charges stemming from his activities at Madison Guaranty Savings & Loan.

e. Is person affiliated with any other financial institution;

☒ Yes ☐ No

or business enterprises:

☒ Yes ☐ No

If yes to either or both, please identify.

McDougal was a shareholder and Board Member of the Bank of Kingston, which was at one point to be merged with Madison Guaranty; thrift records indicate that the merger was called off due to legal ramifications.

McDougal is a principal in the following business enterprises:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Fambrook Manor, Inc.	Holling Manor, Inc.

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CRIMINAL REFERRAL CROSS
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Smith-Tucker-McDougal Smith-McDougal

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

- a. NAME: (First/Middle/Last) McDougal, Susan H.
ADDRESS: (Street/City/State/Zip) Unknown
DATE OF BIRTH: (Month/Day/Year) Unknown
SOCIAL SECURITY NO: Unknown
- b. Relationship to the financial institution: (Check all applicable blocks)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- c. Is person still affiliated with the financial institution:
____ Yes X No
If No, terminated _____, resigned X. Date (Month/Day/Year):
Describe circumstances: (If necessary, use continuation sheet)
Susan McDougal resigned from the Board of Directors in December 1985, but remained active in the day to day activities of the association's subsidiary operations.

- d. Prior or related referrals:
____ Yes X No
If Yes, please identify.

- e. Is person affiliated with any other financial institution;
____ Yes ____ No Unknown at this time
or business enterprise:
X Yes ____ No
If yes to either or both, please identify.

Susan McDougal is a principal in the following business enterprises:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembroke Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

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6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME: (First/MI/Last) Anspaugh, Lisa
ADDRESS: (Street/City/State/Zip) Unknown
DATE OF BIRTH: (Month/Day/Year) Unknown
SOCIAL SECURITY NO: Unknown

- b. Relationship to the financial institution: (Check all applicable blocks)

<input type="checkbox"/> Officer	<input type="checkbox"/> Anspaugh	<input type="checkbox"/> Officer	<input type="checkbox"/> Anspaugh	<input type="checkbox"/> Anspaugh
<input type="checkbox"/> Director	<input type="checkbox"/> Anspaugh	<input checked="" type="checkbox"/> Employee	<input checked="" type="checkbox"/> Anspaugh	<input checked="" type="checkbox"/> Anspaugh

- c. Is person still affiliated with the financial institution:
Yes ☒ No

If No, terminated ____, resigned ____. Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

- d. Prior or related referrals:
Yes ☒ No

If Yes, please identify.

- e. Is person affiliated with any other financial institution:
Yes ☐ No ☐ Unknown at this time

or business enterprise:
☒ Yes ☐ No

If yes to either or both, please identify.

Anspaugh was allegedly a partner with Susan McDougal in several companies, and assisted McDougal with her "bookkeeping" for the McDougal's various companies including:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembroke Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

MADISON GUARANTY SAVINGS & LOAN
 CRIMINAL REFERRAL 00001
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- a. **EXPLANATION/DESCRIPTION OF SUSPECTED VIOLATION.** Provide a Brief narrative description of the activity giving rise to the referral, explaining what is unusual or irregular about the transaction. Details will be provided later in the form. The purpose of this paragraph is to provide a summary description of the overall transaction. (List applicable account numbers.)

Between February 1984 and July 1987, James H. McDougal, Susan H. McDougal, Lisa Anspaugh, Jim Guy Tucker, Stephen A. Smith, Bill Clinton, Hillary Rodham Clinton, and other individuals who are as yet unidentified, were principals in at least one, and possibly more, of the following companies and/or business interests, each of which maintained a checking account at Madison Guaranty Savings & Loan ("MGSL"):

Madison Marketing
 McDougal & Associates
 Flowerwood Farms, Inc.
 Pembroke Manor, Inc.
 Great Southern Land Co.
 Smith-Tucker-McDougal

Designers Construction
 Madison Financial Corporation
 Whitewater Development Corp., Inc.
 Rolling Manor, Inc.
 Tucker-Smith-McDougal
 Smith-McDougal

MGSL checking account histories from September 1984 through May 1985 were reviewed and analyzed for each of these entities (hereafter referred to as the "the combined companies"). The patterns that evolved from this review go back to February 1984, possibly earlier, and occur as late as July 1987.

During this time frame, some or all of the principals of the aforementioned companies allegedly allowed, or participated in, numerous questionable cash flow and "loan" transactions between the combined companies, and other financial institutions. The transactions reviewed and discussed herein will allege excessive overdrafts resulting in unauthorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud; each of these actions, compounded by the extended time frame during which they occurred, lends causation to the probability that some or all of the McDougal's business associates and partners, the collective principals of these combined companies, had knowledge of these activities. The extensive nature of these activities could allegedly constitute ongoing criminal and regulatory violations which lasted for a period of three or more years, and could have ultimately contributed to the failure of the Association.

Although some of these companies, such as Madison Marketing, Madison Financial Corporation, and Flowerwood Farms appeared to be viable and active entities, the others appeared to be little more than shell companies with limited assets, whose checking accounts went through sporadic flurries of activity, "money in/money out", then reverted back to minimal balances with very limited activity. The account histories indicate that the collective checking accounts for these entities incurred very limited, if any, monthly service charges, despite their below minimum balances, and limited overdraft charges regardless of the excessive number of overdrafts in several of the accounts.

An analysis of the aggregate checking accounts for these entities between December 1984 and May 1985 reflects a minimum of 95 check transactions occurring by and between the combined companies and/or outside financial institutions, totalling \$1,019,122. There were a minimum of 45 deposit transactions by and between the combined companies, affiliated persons and/or financial institutions which totalled \$1,079,142. The resulting minimum number of "money in/money out" transactions for these combined, predominantly shell, companies was \$2,098,264 over a six month period of time. To produce all checks from each account, even for a six month period of time, would have been cost prohibitive as well as labor intensive; therefore, only randomly selected checks and deposits were produced from film for the 12/84 - 5/85 target time frame.

The combined companies "lent" one another in excess of \$190,000 during the time frame of December 1984 through May 1985. There were 11 checks written, designated as "loans" by and between the entities, that totalled \$192,886; however, there is no indication of any form of repayment between the entities. This premise lends support to the suspicion that the McDougal's were utilizing these shell companies as a personal "cash cow" from which to generate funds for their own use, and to the further benefit of some

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or all of their business partners, including loan payments to outside financial institutions or behalf of the various partnerships. The McDougals' allegedly further used these shell companies to filter funds from MCFL through Madison Financial Corporation and its subsidiaries for their own benefit.

From December 1984 through May 1985, the personal checking account of James and Susan McDougal (account # 424) was frequently overdrawn, with overdraft amounts of up to \$30,000, lasting for two and three weeks at a time. During this time frame, the combined companies wrote at least 10 checks to James or Susan McDougal, totalling \$83,170, calling the funds "loans". The minimum number of collective deposits from various sources shown going into the McDougal's account during the same time frame is in excess of \$690,000, with checks going out of the account totalling over \$622,000.

Examples of James McDougal's misuse of position are clearly indicated in the number of checks which force paid through the McDougal's joint checking account in the target time frame. The significant amounts, frequency and time span of the overdrafts are being alleged as unauthorized loans for the purposes of this referral. Substantiation of these activities is outlined in the following examples:

- On 1/28/85, check # 577 for \$13,181.07 was written from the McDougal's account to Worthen Bank for a loan payment. The signature on the check reads "James B. McDougal", but bears no resemblance to his actual signature. The day the check was written, there were insufficient funds in the account, at which juncture a \$14,000 "personal loan" was written from Flowerwood Farms (check # 179) to Jim McDougal. (Susan McDougal's signature on the Flowerwood Farms check had also been forged). Despite the \$14,000 loan, the check to Worthen Bank was force paid, overdrawn the McDougal's account by \$4,116.97, where the balance remained until a deposit of \$5,127.04 arrived from an unknown source.
- On 2/7/85, Susan McDougal sent check # 589 for \$3,154.28 to the IRS; the day the check was written the account was overdrawn by \$43,282.00, and when the check was force paid, the balance dipped to \$-8,777.06. The initial overdraft of \$43,282.00 was caused by the force payment of the previously mentioned check to Worthen Bank.
- On 4/4/85, Susan McDougal wrote check # 688 for \$3,000 to the Bill Clinton Campaign Fund; the check was force paid on 5/3/85 when the account was already overdrawn \$7,897.73, increasing the negative balance to \$-10,897.73. The same day, Flowerwood Farms wrote a \$3,000 check to Madison Guaranty, which was apparently cashed; given the identical dollar amounts, the probability exists that these funds were also contributed to Clinton's campaign, which, if active solicitations for contributions were occurring, could have provided the impetus for his business associates to write checks totalling \$6,000 to his campaign fund, one of which put the McDougal's own account in a \$-10,000 negative balance.
- On 4/19/85, check # 699 for \$55,000 was written on the McDougal's account to Flowerwood Farms; this was done to cover Flowerwood's existing overdraft of \$-50,994.18 which occurred when an \$86,612.68 check to Madison Guaranty was force paid. The \$86,612.68 check (#196) was a loan payment on McDougal related loan #1591. The date that the check for \$55,000 was written, the McDougal's account balance was \$19,429, and was subsequently overdrawn by \$428,077.82 when the check was force paid, documenting just one of many instances of check "kiting." The overdraft status on the McDougal's account was remedied by a \$29,209.30 check from Erecucar, Inc. (allegedly the "car leasing department" of Madison Financial Corporation), which was noted as a "refund on black 280 SL Mercedes which had been purchased by the McDougal's on 4/18/85. A similar "refund" situation occurred with a \$37,149.30 Madison counter check, written to Jim McDougal for an "85 380 SL Mercedes", signed by Henry (or Harry) signature (almost illegible) Hamilton. Jim McDougal had previously written check # 691 for \$37,149.30 to Erecucar Inc. on 4/9/85. In one instance, the funds were rebated to the McDougal's when their account balance was in an excessive state of overdraft.

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On 5/24/85, check # 760 for \$83,233.29 was issued from the McDougal's account to Union National Bank, allegedly for a loan payment. The date the check was written, the McDougal's account contained a balance of \$963.19; Jim McDougal procured loan #2764 for \$85,000 from MGSL, depositing the funds into their joint account to cover the check to Union National Bank. However, despite the deposited loan proceeds, the \$83,233.29 check was force paid, putting the McDougal's account balance at \$4,096.03.

It should also be pointed out that the McDougal's clearly diverted funds from their MGSL home purchase and improvement loan of \$381,502, funded in 2/83, for other purposes. Over \$100,000 was diverted for the purpose of bringing principal and interest payments current on five separate MGSL loans, as evidenced by McDougal check # 611 for \$95,362.62, and check # 612 for \$5,659.17. It should be further noted that check #616 for \$4,300 was written from the loan proceeds to Lorene McDougal, a relative, for undisclosed purposes.

In addition to McDougal's blatant misuse of position in allowing his personal account to exist in such an overdrawn state, he allowed the same circumstances to occur with the combined shell companies as well. Between 12/84 and 5/85, there were 16 overdraft situations within the accounts of the combined companies. The majority of these overdrafts were cured by deposits from one company to another, sometimes by "kiting" funds between accounts in which insufficient balances existed. This allegedly happened on at least two occasions with Whitewater Development, who evidently had another account (possibly at Bank of Kingston, now Madison Bank & Trust), into which funds were deposited from the MGSL Whitewater account, leaving it in an overdraft status.

During the target time frame, Whitewater Development wrote a minimum of 10 checks, totalling \$70,638.41. Of these 10 checks, five checks totalling \$60,425 were written on insufficient funds. The ensuing overdrafts were covered by funds from the other combined companies, some of which were provided by bank loans. Some of the Whitewater checks with more significant dollar amounts, such as check # 118 for \$7,500, and # 128 for \$5,071.23, were payable to The Bank of Cherry Valley for principal and interest on two separate loans, and were written on insufficient funds. Check # 118 was force paid, overdrawing Whitewater's account by \$7,492.04, where the balance remained until check # 152 from Tucker-Smith-McDougal for \$7,500 was deposited into Whitewater's account. The circumstances surrounding Whitewater check # 128 were similar, only the deposit came from the combined accounts of Rolling Manor, Tucker-Smith-McDougal, Flowerwood Farms and Pembroke Manor. Maurice Smith, principal and/or loan officer of the Bank of Cherry Valley, is allegedly a long time associate of Jim McDougal. Smith was also a frequent caller to Jim McDougal, according to the MGSL phone message logs.

Each instance in which Whitewater's actions resulted in an overdraft, no service charge or fees were assessed, with the exception of two in 1985, both of which were refunded. The two largest checks written by Whitewater during this time frame, check #137 for \$25,000, payable to Osarks Realty Co., and check # 138 for \$30,000, payable to James McDougal (alleged "loan repayment" - although the records show no indication of any loan from McDougal to Whitewater) were both force paid as there were insufficient funds in the account to cover either check. When the \$25,000 check paid, placing the balance at \$24,470.90, the overdraft was covered by a check from Flowerwood Farms for \$24,455.90 (the amount of the overdraft, less the \$15 service charge which was later refunded). The Flowerwood funds came from the proceeds of a \$135,000 cashiers check drawn on Stephens Security Bank, Stephens, Arkansas. The \$30,000 check written from Whitewater to James McDougal was written when Whitewater had a balance of \$270.13. When the check was force paid, the balance went to \$29,744.87, where it remained for two weeks until a \$30,000 check from Madison Financial Corporation (subsidiary of MGSL) was deposited into Whitewater's account. There was no explanation given as to why Madison Financial would have given (or even "loaned") Whitewater Development \$30,000.

At this juncture, it should be noted that shortly after the target time frame, in October 1985, the MGSL Board of Directors minutes reflect that Madison Financial Corporation was overdrawn by \$2.7 million; the Board subsequently voted to call the overdraft "an investment in the service corporation", as up to 6% of the Association's assets could be invested in service corporations, from a regulatory standpoint. It should be further noted that the \$30,000 check James McDougal received from Whitewater was endorsed to Earth Movers, Inc., (whose principal is former Senator J. W. Fulbright)

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On 1/22/85, check #161 for \$3,894.66 was written to First Commercial Bank for "interest" on a commercial loan. James McDougal's signature was allegedly signed or forged by Susan McDougal, who was technically the only signatory on the M&L signature card. The date the check was written, the account did not contain sufficient funds, and subsequently went into an overdraft status of \$42,953.00 when the check force paid. The overdraft was cleared with a check from Flowerwood Farms (#176) for \$3,500 on 1/28/85.

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- On 3/13/85, check #166 for \$4,000 was written to Citizen's Bank for "release deed Madison County". James McDougal's signature was yet again allegedly signed by his wife, Susan. The date the check was written, the Tucker-Smith-McDougal account did not contain sufficient funds, and the account went into overdraft status of \$3,027.69 when the check was force paid on 3/19/85. The account maintained an overdraft status until 4/9/85, when a deposit of \$9,189.69 was received from Flowerwood Farms (check # 193). The funds from Flowerwood Farms were exactly enough to cover the existing overdraft, plus cover Tucker-Smith-McDougal check # 169 for \$8,664.73 which had been written to Citizen's Bank of Marshall, Arkansas, on 4/1/85 before there were sufficient funds available to honor the check.
- On 3/11/85, First Mortgage, Inc. wrote check # 5923 for \$1,150 to Madison Guaranty Savings and Loan. This check was allegedly endorsed by Susan McDougal for Madison Guaranty, and deposited to the account of Tucker-Smith-McDougal the day before a \$2,500 check written to Whitewater cleared the account, leaving a balance of \$72.31.

Similar instances involving the Flowerwood Farms account have been previously evidenced through the examples used in conjunction with the McDougal's personal checking account. Additional specific information on activity in each of the combined accounts will be forthcoming in the chronology of events which follows.

The extent of the foregoing activities will substantiate this referral's allegations of check kiting between the related entities ("the combined companies"), as well as transactions between McDougal's personal account and the combined companies. This referral will further allege that, due to the extended period of time over which these transactions occurred, these actions were probably known to some or all of the principals of the combined companies. Each of these principals appear on the witness list, as there is insufficient evidence at this time, as previously stated, to prove that they had knowledge of these activities. This range of events further serves to support the allegations of forgery, misuse of position, diversion of funds, and probable bank fraud as well as conspiracy to defraud the institution on the part of James McDougal, Susan McDougal and Lisa Ansbaugh.

3. GIVE A CHRONOLOGICAL AND COMPLETE ACCOUNT OF THE SUSPECTED VIOLATION: (Use continuation sheet, if necessary.)

- Relate key events to documents and attach copies of these documents

For purposes of clarification, the following chronology of events is broken down by entity account, and in the case of James & Susan McDougal, by individuals.

James B. and Susan E. McDougal, MDEL Account # 424

- 1/28/85 Check # 577 for \$13,181.07 was issued to Worthen Bank for principal and interest payment on a loan. James McDougal's signature appears to have been forged, or signed by an unauthorized party on his behalf. There were insufficient funds in the account that date check # 577 was written; however, the McDougal's received a "personal loan" of \$14,000 from Flowerwood Farms, Inc. (check # 179 - showing an allegedly forged "Susan McDougal" signature) on 1/29/85. Despite the \$14,000 "loan"/deposit, the check to Worthen Bank was force paid on 2/6/85, leaving the account overdrawn \$4,116.97, where it remained until 2/7/85 when a deposit of \$8,127.04 was received from an unknown source.
- 2/5/85 Check # 589 for \$3,154.28 was issued to the IRS. The check was allegedly signed by Susan McDougal. On the date it was written, the account was overdrawn by \$4,282.00. When the check cleared on 2/19/85, the account's overdraft status increased to \$8,777.05. As previously noted, the initial overdraft status on the account was caused when check # 577 for \$13,181.07 to Worthen bank was force paid.

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- 2/19/85 Check # 611 for \$95,562.62 was issued to Madison Guaranty Savings & Loan, for principal and interest payments on five McDougal related loans. This check cleared from loan proceeds of \$351,502.80 deposited to McDougal's account on 1/22/85. The proceeds were designated "purchase and renovation of home" for the McDougals; however, over \$100,000 of the proceeds were ultimately diverted for the purpose of bringing other debt current.
- 2/19/85 Check # 612 for \$8,659.17 was issued to Madison Guaranty Savings & Loan for interest on a McDougal related \$85,000 unsecured commercial loan. Again, the check cleared through the funds provided by proceeds from the home loan.
- 2/20/85 A deposit for \$1,000 was credited to the McDougal's account; the deposit was check # 181 from Flowerwood Farms, allegedly signed by Susan McDougal, and deposited to their account when it was overdrawn \$411,587.09>.
- 2/21/85 Check # 613 for \$178,301.02 was issued to Madison Bank & Trust (formerly the Bank of Kingston) to payoff "#4 Bettewood Mortgage at Pulaski Bank". #4 Bettewood is the address of the McDougal's new home. It is recommended that the Pulaski Bank records be reviewed to verify this information.
- 2/22/85 A deposit for \$10,000 was credited to the McDougal's account; the funds coming from Madison Marketing check # 238 payable to Susan McDougal, with no specific stated purpose. Prior to this deposit, the McDougal's account was overdrawn \$48,612.05>.
- 2/22/85 Loan proceeds, in the form of Cashier's Check # 2218 for \$351,502, were deposited into the McDougal's account. As noted, this loan was for the stated purpose of purchasing and renovating a home.
- 2/26/85 Check # 616 for \$4,500 was issued to Lorene McDougal, one of Jim McDougal's relatives. This check did not indicate a specific purpose, and cleared through the funds provided by the loan proceeds. As the McDougals were contributing to the Clinton Campaign fund during this time frame, it is recommended that a further investigation be undertaken to determine the possibility that these funds were provided to Lorene McDougal for the possible purpose of making additional campaign contributions on behalf of the McDougals or Madison Guaranty.
- 2/27/85 Check # 617 for \$450 was issued to Lorene McDougal. Again, there was no designated purpose on the check, which raises the previously unanswered question. Both checks to Lorene McDougal were signed by Susan McDougal.
- Check # 157 for \$4,500 was issued to Madison Bank & Trust for interest on loan # 3376.72. This check also cleared from the home loan proceeds, getting the dollar amount of funds diverted for other debt to over \$100,000.
- NOTE: It appears that the McDougals each kept their own set of checks for their account #424, and would apparently write checks from which ever pad was available at the time. The numbers on the checks frequently range all over the spectrum in a non-sequential order.
- 3/1/85 Check # 158 for \$8,250 was issued to Robert T. Wilson for "payment on note". Wilson's specific role in this transaction has not been defined, nor has the purpose of the "note" (loan) in question. Jim McDougal allegedly signed this check, which appears to be a fairly rare occurrence.
- 3/10/85 Check # 178 for \$13,248 was issued to Haynes Auto, with no specifically stated purpose, but would appear to be for the purchase of a car. The check is signed "Susan McDougal", but does not appear to be Susan McDougal's alleged signature. This check cleared from the home loan proceeds. The same day check # 179 for \$1,738 was issued to Haynes Auto,

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again with no specifically stated purpose, and check # 180 for \$13,250 was written to a Mr. Charles Bronson, for no specifically stated purpose. All three of these checks, totalling \$28,236, cleared from the proceeds of the McDougal's home loan.

3/10/85 Check # 181 for \$4,852 was issued to ITT Kruse Int.; the memo field shows several loan numbers. It is recommended that records be subpoenaed to determine the nature of, and participants in, this loan.

3/19/85 Madison Guaranty Savings issued check # 2104 for \$30,750 to James S. McDougal for "reimbursement for lease auto purchased for Leasing Department". It is recommended that further investigation be conducted to determine if this was reimbursement for the \$14,980 in checks written to Haynes Auto on 3/10, and possibly the \$13,250 check also written on 3/19, to Charles Bronson. If this is the case, the checks written on 3/10 totalling \$28,236, indicating that James McDougal was reimbursed for \$2,514 that he did not actually spend.

3/29/85 Check # 676 for \$11,000 was issued to Quapaw Title Company, with no stated purpose. This transaction would seem to indicate the possibility of a formal real estate sale or closing of some type; possibly related to the purchase of the McDougal's home, or related in some manner to the \$25,000 transaction between Whitewater Development and Osarks Realty Company. It is recommended that the Quapaw Title Company and Osarks Realty Company records be reviewed to assess the purpose of the \$11,000 check from the McDougals, and it's potential relationship to Whitewater and Osarks Realty, if any.

4/4/85 Check # 688 for \$3,000 was issued to the Bill Clinton Campaign Fund, and allegedly signed by Susan McDougal. The account balance on the date the check was written stood at \$<7,897.73>; when the check cleared on 5/3, the overdraft status increased to \$<10,897.73>. The account balance remained at this level until 5/9 when \$5,281.21 was deposited from an unidentified source.

4/9/85 Check # 691 for \$37,149.30 was issued to Execucar, Inc., allegedly a subsidiary of Madison Financial Corporation. The check did not state a specific purpose. When the check was written, the account had a balance of \$34,538.78; the check cleared on 4/12 overdrawing the account by \$<10,075.00>. Funds totalling the exact same amount were deposited into the McDougal's account on 4/22; the source being a Madison Guaranty Savings & Loan counter check for \$37,149.30, allegedly signed by either Harry or Henry Hamilton, with the notation "88 MB 380 SL". It is conceivable that McDougal purchased the car, and then sold it for the same amount two weeks later. However, when considered with the fact that a similar situation occurred with McDougal and Execucar 9 days later on 4/18, the sale/purchase theory becomes increasingly implausible.

4/17/85 A deposit of \$33,000 was credited to the McDougal's account; the source remains unidentified at this time, but research continues.

4/18/85 Check # 697 for \$39,209.30 was issued to Execucar, Inc. for a black Mercedes. The same amount was refunded to the McDougal's account by Execucar on 5/1/85 when their account was overdrawn by \$<28,812.96>. By this point the McDougals have evidently purchased, and either returned or sold, two expensive cars in a 10 day period of time. It is recommended that these transactions be further investigated through the records of Execucar, Inc. to determine that nature of this activity.

4/19/85 Check # 699 for \$55,000 was issued to Flowerwood Farms; this was a "loan" to cover Flowerwood's existing overdraft of \$<50,994.17>, which occurred as a result of an \$88,612.68 payment to Madison Guaranty Savings & Loan on

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- a McDougal related loan. At the time the \$55,000 check/"loan" to Flowerwood was written, the McDougal's had \$19,429.50 in their account. When the check was force paid on 4/23, the McDougal's account was overdrawn by \$<35,077.82>
- 5/1/85 Check # 723 for \$1,207.30 was issued to Madison Guaranty for the April and March payments on McDougal related loan # 1044. The account was overdrawn \$<7,897.73> when the check force paid on 5/3/85. The end result of this transaction appears to be the McDougal's overdrawing their account, resulting in an unauthorized "loan" from the Association, in order to pay the Association for their April and March loan payments; there appears to be little, if any, logic to these circumstances.
- 5/1/85 Check # 704 for \$50 was issued to the Democratic Party of Arkansas, for the purchase of "2 Jefferson Jackson Day dinner tickets". The account balance was \$<5,826.36> when the check force paid.
- 5/15/85 Check # 748 for \$20,000 was issued to Madison Guaranty for the purchase of Cashier's Check # 2704. The remitter on the Cashier's Check was Earth Mover's, Inc., whose principal is J.W. Fulbright, former Senator from Arkansas. Fulbright endorsed the check "for deposit only to Riggs National Bank" on 5/18. On 5/20, \$20,000 was deposited into McDougal's account which was overdrawn \$<17,682.20> at the time. The source of the deposit is undetermined at this time. It is recommended that Riggs National Bank records be reviewed to determine the possibility that these funds traveled from Fulbright back to McDougal. If so, this transaction is a likely candidate for possible check kiting.
- 5/16/85 A deposit of \$8,370 was credited to McDougal's account, which was overdrawn \$<26,052.20> at the time. The funds came from Flowerwood Farms check # 204 for \$190, Pembroke Manor check # 128 for \$5,300, Great Southern Land Company check # 126 for \$180, Rolling Manor check # 212 for \$2,400 and McDougal & Associates check # 107 for \$300. Each of the checks was designated as a "loan".
- 5/24/85 Check # 760 for \$83,233.29 was issued to Union National Bank. When the check was written, the account contained \$963.19. McDougal borrowed \$85,000 from MGS (loan # 2764), and the loan proceeds were deposited into their account to cover the \$83,233.29 check. However, when the check cleared on 5/31, it was forced paid, leaving the account with an overdraft balance of \$<4,096.03>.
- Whitewater Development Corporation, Inc., Account # 2301515
Principals: James and Susan McDougal
Bill and Hillary Rodham Clinton
- 12/7/84 The Whitewater account was overdrawn by approximately \$<6,000>, when a deposit for \$9,310 brought the balance up to \$3,423.65. The deposit was made up of funds from the accounts of the combined companies: Tucker-Smith-McDougal check # 159 for \$1,600, Rolling Manor check # 198 for \$330 and Pembroke Manor check #120 for \$7,100. Each check was designated as a "loan" to Whitewater, and each check was allegedly signed by either Susan McDougal, or Lisa Anspaugh signing as Susan McDougal. Once the deposit was credited, Whitewater issued check # 127 for \$3,27.18 to the Bank of Cherry Valley, taking the account balance down to \$147.47.
- 1/4/85 Check # 128 for \$5,071.23 was issued to the Bank of Cherry Valley. The check was signed "James B. McDougal" (who had no signature authority on the account) allegedly by Susan McDougal, based on the handwriting. This check cleared the Whitewater account on 1/11 - the day after a deposit for \$4,660 was made to Whitewater by the combined companies accounts.

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- 1/10/85 Whitewater received a deposit for \$4,660 from the combined company accounts of Rolling Manor, Tucker Smith McDougal, Flowerwood Farms and Pembroke Manor, bringing the account balance to \$5,095.27.
- 1/22/85 Check # 129 for \$1,000 was issued to Whitewater Development Corporation, with the notation "Acct 317.5". This check cleared on 1/28; the same day that Flowerwood Farms issued check # 177 for \$1,000 to Whitewater, bringing the account balance up to \$1,446.07. Without the benefit of the deposit from Flowerwood, the check written by Whitewater to the Bank of Cherry Valley would have been insufficient.
- 2/15/85 Check # 132 for \$3,000 was issued to Chris Wade (an appraiser, according to MSL Board Minutes), with no specific stated purpose. The check was signed "James B. McDougal", allegedly by Susan McDougal. This check cleared on 3/13, when the Whitewater account was already overdrawn \$<1,891.03>, increasing the overdraft to \$<4,891.03>. On the same date, there was a deposit made to the Whitewater account from the combined companies accounts, curing the overdraft.
- 2/18/85 Check # 133 for \$1,625 was issued to Charles E. James "for accounting" services. The check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. This check cleared on 2/21/85, putting the account into overdraft status by \$<1,192.06>. The account effectively stayed overdrawn until 1/13, when three deposits (two from the combined companies and one from an undetermined source) totalling \$8,800 were credited. The deposits were for \$3,300, from the combined accounts, \$2,500 from Tucker Smith McDougal, and \$3,000 from an unidentified source. Given the proximity of this deposit to the \$3,000 check written to Chris Wade, it is recommended that further research be conducted to determine the possibility of Wade "refunding" the \$3,000 back to Whitewater, which could account for the "mystery deposit."
- 2/21/85 Check # 134 for \$1,000 was issued to Whitewater Development Corporation with the notation "Account 317.5". The date the check was written the account balance was \$<1,192.06>, and when the check cleared on 2/28, the overdraft status increased to \$<1,906.93>. Evidence points to the probability that the MSL Whitewater account was allegedly "swapping", or kiting, checks with a sister account at another bank, in order to maintain a certain account balance.
- 3/7/85 Check # 135 for \$650 was issued to Charles James, again for "accounting" services. This check cleared the account, taking the balance to \$258.97 on 3/22.
- 3/22/85 Check # 137 for \$25,000 was issued to Ozarks Realty Company; the purpose was not stated on the check. This check was signed "James B. McDougal, allegedly by Lisa Anspach, based on the handwriting. The date the check was written, Whitewater's account reflected a balance of \$258.97; when the check force paid on 4/1, the account was overdrawn by \$<24,470.90>, which included a \$15 overdraft charge that was later rebated. The account stayed overdrawn until 4/9 when a \$24,455.90 deposit was received from Flowerwood Farms (check # 194). This deposit amount was exactly the amount of the overdraft, less the \$15 overdraft charge. Flowerwood Farms provided the funds from a \$135,000 cashiers check drawn on Stephens Security Bank of Stephens, Arkansas, which had previously been deposited to it's account.

NOTE: According to various Oklahoma, Texas and New York newspaper reports from March 1992, this could have been the time frame in which Whitewater was conducting transactions regarding the house that was allegedly purchased and subsequently sold by Ms. Clinton. It is recommended that the Whitewater and Ozarks Realty records be reviewed to determine the possibility of any existing relationship between these two transactions, and the nature of any such relationship, if found.

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- 4/9/85 A deposit of \$24,455.90 was credited to Whitewater's account. As previously noted, the funds came from Flowerwood Farms check # 194.
- 4/19/85 Check # 118 for \$30,000 was issued to James B. McDougal with the notation "loan repayment". When the check was written, the account balance was \$270.13; when the check force paid, the account was overdrawn by \$<29,744.87>. This check was signed "Susan McDougal", allegedly by Lisa Anspaugh. James McDougal endorsed this \$30,000 check to Earth Movers Inc. (J. W. Fulbright), who in turn endorsed it to Madison Guaranty for the purchase of a Cashier's Check, drawn from MGSL account # 7001312, transaction # 7801. Research to locate the firm of the Cashier's Check is continuing.
- 4/29/85 Check # 119 for \$17 was issued to the Arkansas Director Finance Administration for the 1985 corporate franchise tax. The check was signed "Susan McDougal", allegedly by Lisa Anspaugh.
- 4/30/85 A deposit for \$30,000 was credited to Whitewater's account. The funds were provided by Madison Financial Corporation, but no purpose was stated on the check. This deposit brought the Whitewater balance from \$<29,744.87> to \$255.13. It is recommended that the records of Madison Financial Corporation be reviewed to determine the specific business purpose of the funds remitted to Whitewater Development. The check from Madison Financial was signed by MGSL Chief Financial Officer, Greg Young, who was also responsible for creating the previously referenced "Reserves" spreadsheet (see referral summary) in which a 10/85 \$30,000 "engineering survey" fee was to be charged to (or reserved from) Whitewater Development.
- Tucker-Smith-McDougal, MGSL Account # 2301353
Principals: James B. McDougal
Jim Guy Tucker
Stephen A. Smith
- 1/22/85 Check # 161 for \$3,894.66 was issued to First Commercial Bank for interest on a loan. The check was signed "James B. McDougal", allegedly by Susan McDougal. James McDougal does not appear on the signature card as a signatory on this account. The date the check was written, the account balance did not contain sufficient funds; when the check cleared on 1/28, the account was overdrawn \$<2,953.00>. The same day, Flowerwood Farms made a \$3,500 "loan" (check # 176) to Tucker Smith McDougal, allegedly for the purpose of covering the overdraft.
- 2/7/85 Check # 162 for \$3,000 was issued to James B. McDougal as a "personal loan". The check was allegedly written and signed by Susan McDougal. This check was deposited to McDougal's account along with a check from Madison Financial Corporation for \$2,127.04 noted as "salary" on the deposit slip.
- 2/14/85 Check # 163 for \$300 was issued to James B. McDougal for "petty cash." This check was also allegedly written and signed by Susan McDougal.
- 2/17/85 Check # 164 for \$1,600 was issued to Charles E. James for "accounting" services. The check was signed "Susan McDougal" allegedly by someone other than Ms. McDougal, and appears to be the signature showing on the actual MGSL signature card. As previously noted, the signature on the MGSL account signature card is not believed to be that of Susan McDougal.
- 3/11/85 A deposit of \$1,150 was credited to the Tucker Smith McDougal account; according to the deposit slip, the funds were related to "Robert Armstrong". However, the check was actually payable to Madison Guaranty Savings, and endorsed on behalf of Madison Guaranty, allegedly by Susan McDougal, and subsequently deposited to the Tucker Smith McDougal account. This deposit was made one day prior to the clearing of Tucker Smith McDougal check # 163 for \$2,500, payable to Whitewater Development.

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- 3/12/85 Check # 165 for \$2,500 was issued to Whitewater Development. This check, along with checks from the other combined companies accounts totalling \$3,300, were deposited to Whitewater on 1/12, curing an overdraft of \$4,891.03. The overdraft status in the Whitewater account was caused by the force pay of check # 132 for \$3,000 issued to Chris Wade.
- 3/13/85 Check # 166 for \$4,000 was issued to Citizens Bank for "release deed in Madison County". This check was signed "James B. McDougal", allegedly by Susan McDougal. The date the check was written, there were insufficient funds in the Tucker Smith McDougal account; the check cleared on 3/19, overdrawing the account by \$43,927.60. This overdraft situation existed for three weeks, until 4/9, at which time a deposit of \$9,189.69 was made into the account by check # 193 from Flowerwood Farms. The difference in the deposit amount and the new account balance, \$3,664.73, was exactly the amount necessary to cover Tucker Smith McDougal check # 169 for \$3,664.73 to Citizen's Bank, written on 4/1 when the account was still overdrawn.
- 4/1/85 Check # 169 for \$3,664.73 was issued to Citizen's Bank of Marshall, Arkansas for payment on "notes 40071190 and 00031484". The status of the account at this time was sufficiently discussed in the foregoing Tucker Smith McDougal transaction dated 3/13/85.
- Flowerwood Farms, Inc. MGL Account # 2301361
Principals: Undetermined at this time
- 12/11/84 Check # 170 for \$8,000 was issued to James B. McDougal. At the time this check was issued, the McDougal's account was overdrawn by \$4,095.39. This deposit from Flowerwood brought the balance up to \$3,904.61
- 1/10/85 Check # 172 for \$1,430 was issued to Whitewater Development as part of a \$4,660 deposit. The funds from this deposit were allegedly used to cover Whitewater's check # 128 for \$5,071.23 to the Bank of Cherry Valley.
- 1/22/85 Check # 173 for \$6,202.26 was issued to First Commercial Bank for "interest on note # 00003618". The check was signed "James P. McDougal" allegedly by Susan McDougal. The date the check was written, the account contained a balance of \$866.74. However, on 1/23 a \$28,900 deposit was credited to the account, received from Bill Benley (brother-in-law of Susan McDougal) allegedly for "20 acres in Pulaski County". The check for \$6,202.26 cleared the Flowerwood account on 1/23.
- 1/24/85 Check # 175 for \$3,500 was issued to James B. McDougal. This check was part of a \$4,675.41 deposit to McDougal's account.
- 1/28/85 Check # 176 for \$3,300 was issued to Tucker Smith McDougal for the alleged purpose of covering the existing Tucker Smith McDougal overdraft. This check was allegedly signed by Susan McDougal.
- 1/28/85 Check # 177 for \$1,000 was issued to Whitewater Development as a "loan" to cover Whitewater's existing overdraft. This check was allegedly signed by Susan McDougal.
- 1/29/85 Check # 179 for \$14,000 was issued to James P. McDougal as a "personal loan". This check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. The loan was allegedly intended to cover a \$13,181.07 check written on McDougal's account to Worthen Bank; however, the check was force paid, and McDougal's account was overdrawn.
- 3/12/85 Check # 183 for \$1,500 was issued to Great Southern Land Company, designated as a "loan." The same day, check # 184 for \$500 was issued to McDougal & Associates, also designated as a "loan. This check was signed "Susan McDougal", allegedly by Lisa Anspaugh.

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- 4/1/85 Check # 188 for \$11,763.11 was issued to International Paper Realty Corporation as a principal and interest payment on a note. The check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. There was a balance of \$1,550.91 in the account the date the check was written; however, a \$135,000 deposit was received and credited prior to this check clearing.
- 4/3/85 Check # 189 for \$33,053.41 was issued to First Commercial Bank to "pay off commercial loan". Funds for this check were derived from a \$135,000 deposit to Flowerwood's account the same day.
- 4/3/85 A deposit of \$135,000 was credited to the Flowerwood account from a Cashiers Check drawn on the Stephens Security Bank of Stephens, Arkansas. Funds from this deposit were remitted from Flowerwood to:
- Madison Guaranty for \$3,000, check # 193 (further research into the possibility that this was a campaign contribution has previously been suggested)
 - Tucker Smith McDougal for \$9,189.69, check # 193, allegedly to cover an existing overdraft.
 - Whitewater Development for \$24,455.90, check # 194, allegedly to cover the overdraft caused by Whitewater's check for \$25,000 to Ozarks Realty.
 - First Commercial Bank for \$33,053.41, check # 189, allegedly for a McDougal related loan payoff.
 - International Paper Realty for \$11,763.11, check # 188, for a loan payment
 - Madison Guaranty Savings and Loan for \$86,612.68, check # 196, allegedly to pay off a McDougal related loan. This check overdraw the account by \$<50,994.18>, which was subsequently covered by James B. McDougal's check for \$55,000, which overdraw McDougal's account by \$<28,077.8>
- 4/4/85 Check # 192 for \$3,000 was issued to Madison Guaranty Savings; there was no specific purpose stated on the check. As previously noted in this referral, it was recommended that further research be conducted into the disposition of these funds to determine the possibility that this was an additional campaign contribution, given the time frame involved.
- 4/9/85 Check # 193 for \$9,189.69 was issued to Tucker Smith McDougal, allegedly for the purpose of covering the existing overdraft in the Tucker Smith McDougal account, as well as covering the yet outstanding Tucker Smith McDougal check # 169 for \$5,664.73 to Citizen's Bank.
- 4/9/85 Check # 194 for \$24,455.90 was issued to Whitewater Development, allegedly to cover Whitewater's overdraft, as previously noted. This check was signed "James B. McDougal", allegedly by Lisa Anspaugh.
- 4/17/85 Check # 196 for \$86,612.68 was issued to Madison Guaranty Savings & Loan for "principal and interest" on McDougal related loan # 1391. This check overdraw the Flowerwood account by \$<50,994.18> when it was force paid. Funds to allegedly cover this overdraft were provided by check # 699 for \$35,000 from James B. McDougal's account. As noted in prior transaction analyses, the \$35,000 check from McDougal overdraw his account by \$<28,077.82>. This transaction provides a blatant example of the check kiting alleged in the summary of the referral.

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5/16/85 Check # 204 for \$190 was issued to James B. McDougal as a "loan." This check was part of a deposit from the combined accounts totalling \$8,370, which went into McDougal's account at a time when it was overdrawn \$<26,052.20>

Of the combined companies accounts, Flowerwood Farms, Inc., Whitewater Development Corporation, Inc., and Tucker Smith McDougal, in conjunction with the personal account of James B. and Susan H. McDougal, were the most active and egregious contributors to the alleged overdraft and check kiting activities. Although the other entities, (Rolling Manor, Inc., Pembroke Manor, Inc., Great Southern Land Company, McDougal & Associates, etc.) contributed a significant share of the "combined companies" deposits and "loans" between the various accounts, the specifics regarding their activities have been omitted for the purposes of brevity. Individual transaction information for the "combined companies" accounts during the 12/84 - 5/85 time frame can be found in the attached database report, which outlines the dates, transaction types, check numbers, payee, payor and deposit recipients. This database has been individually sorted by date, dollar amount, payee, payor and deposit recipient in order to facilitate ongoing research and further investigative activities.

- Explain who benefitted, financially or otherwise, from the transaction, how much, and how.

Those who allegedly stood to gain the most benefit from these numerous and questionable inter-account transactions, were the principals of the combined entities; James and Susan McDougal, Lisa Anspaugh (who is a principal in Designer Construction and allegedly Madison Marketing, as well as an alleged business associate of Jim Guy Tucker), Bill and Hillary Rodham Clinton, Jim Guy Tucker, Steve Smith, and any other principals as yet unidentified. The overdrafts and "loan" transactions, or alleged check "swapping" and kiting, between the combined companies accounts ensured that loan payments and other corporate obligations were met, thus clearly benefitting the principals of each entity.

In addition, the McDougal's stood to gain extensive financial benefit by utilizing these various shell companies as a vehicle through which to channel funds from Madison Guaranty, through Madison Financial and it's subsidiaries, into the personal account of James and Susan McDougal.

- Furnish any explanation of the transaction provided by the suspect and indicate to whom and when it was given.

To date, no explanation has been given by any suspect.

- Furnish any explanation of the transaction provided by any other person.

No explanations of these transactions have been provided by anyone other than the Investigator at this time.

- Furnish any evidence of coverup by the suspect, or evidence of an attempt to deceive federal or state examiners or others.

This entire series of transactions by and between the combined companies and their accounts is being alleged as an effort by the McDougal's to "smokescreen" the flow of funds from Madison Guaranty and it's subsidiaries, into the various entities owned and operated by the McDougal's and their business associates.

- Indicate where the suspected violation took place (e.g., main office, branch, other).

These violations collectively took place at the Madison Guaranty Savings and Loan office at 16th and Main in Little Rock, Arkansas.

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- Recommend any further investigation that might assist law enforcement in fully examining the potential violation.

Individual recommendations have been noted within the transactional analyses throughout the body of the referral. However, it should be reiterated that certain individuals on the witness list should be extensively interviewed with regard to their knowledge of the activities between the combined companies and their accounts.

- 7c. Indicate whether the suspected violation appears to be an isolated incident or whether it relates to other transactions. (Explain)

No; this violation was not isolated, but rather ongoing over a period of three or more years, possibly making a significant contribution to the failure of the institution.

8. EXCLUSION OF INFORMATION FROM THE REFERRAL:

Has any pertinent information been excluded from this referral as a result of any legal or other restraint?

Yes ☒ No ☐ If so, why?

Have the excluded information or documents been segregated for later retrieval?

Yes ☒ No ☐

NOTE: DUE TO THE BULK OF THE EXHIBITS, THEY WILL BE SHIPPED TO THE U.S. ATTORNEY'S OFFICE UNDER SEPARATE COVER.

9. HAS SUSPECTED INDIVIDUAL(S) MADE ANY ADMISSIONS?

Yes ☒ No ☐ If so, who?

10. WITNESSES:

List any witnesses who might have information about the suspected violation and describe their position or employment. Indicate if they have been interviewed. (Use continuation sheet, if necessary.)

	NAME	POSITION	ADDRESS (City/State/Zip)	INTERVIEW NUMBER	INTERVIEWED	
					YES	NO
1.	Bill Clinton	Governor/AR and McDougal business associate	Little Rock, Arkansas	Unknown		X
2.	Hillary Rodham Clinton	Consent/MQSL and McDougal business associate	Little Rock, Arkansas	Unknown		X
3.	Jim Goy Tucker	Lt. Governor/AR and McDougal business associate	Little Rock, Arkansas	Unknown		X
4.	Stephen A. Smith	McDougal business associate	Little Rock, Arkansas	Unknown		X
5.	L.W. Fairlight	McDougal business associate	Little Rock, Arkansas	Unknown		X
6.	Greg Young	Former MQSL Chief Financial Officer	Little Rock, Arkansas	Unknown		X

In addition to the foregoing witnesses, it is also recommended that the following individuals be interviewed with respect to their knowledge:

Kirby Randolph - former receptionist at MQSL, and recipient of all monthly statements on the combined companies accounts in lieu of mailing; also the wife of R. D. Randolph, a McDougal business associate and frequent depositor to various combined companies accounts.

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R. D. Randolph - former McDougal business associate; allegedly involved with several of the combined companies.

Bonnie Crocheron - currently employed by MGS's successor entity, Central Bank and Trust. Formerly involved in administration at the Association; allegedly knowledgeable regarding the Institutions Demand Deposit Accounts and their holders.

Charles E. James - accountant for the combined companies, and registered agent for Whitewater Development Corporation.

11. DISCOVERY AND REPORTING:

- a. Who discovered the suspected violation and when?

Investigator; in May 1992

- b. Has the suspected violation been reported to the Board of Directors?
☐ Yes ☐ No ☐ Not Applicable

By whom and when? ☐ Not Applicable

- c. Has the Board of Directors taken action?
☐ Yes ☐ No ☐ Not Applicable

If so, what and when? ☐ Not Applicable

- d. Has the suspected violation previously been reported to federal or local law enforcement or to any federal or state supervisory agency?
☐ Yes ☒ No

If Yes, Agency:

Agent:

Address: (City/State)

Telephone Number:

12. LOSS:

- a. Amount of Loss known: \$

- b. Restitution by:

In the amount of: \$

- c. Name of Applicable Surety Bond Company:

- d. Amount of Bond: \$

- e. Amount of deductible: \$

- f. Was claim filed? ☐ Yes ☐ No

- g. Settlement by Surety Company: \$

- h. Total restitution and settlement to date: \$ ☐ Not Applicable

- i. Net Loss: (After subtracting any amounts paid in the form of restitution or settlement) \$

- j. Is additional loss suspected? ☒ Yes ☐ No
 (If yes, explain)

Undetermined at this time

Not Applicable

Not Applicable

The nature of the transactions identified in this referral could lead to additional losses under further investigation.

- k. Has the suspected violation had a material impact on, or otherwise affected, the financial soundness of the institution? If so, please explain.

Yes; the activities identified and alleged within this referral could have contributed to the failure of the institution.

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13. OFFER OF ASSISTANCE:

The individuals listed below are/will be authorized to discuss this referral with appropriate law enforcement officials and to assist in locating or explaining any documents pertinent to this referral, provided that contact is first made with:

NAME	TELEPHONE NUMBER
Lee O. Ausen/Department Head/ Criminal Investigations/KCCC	(816) 531-2212
L. Richard Torio/Field Investigations Officer/KCCC	(816) 531-2212

14. FORM PREPARED BY: Laura Jean Lewis
Position: Criminal Investigator
Agency/Institution: Resolution Trust Corporation
Telephone Number: (816) 968-7237
Date: August 31, 1992

15. AUTHORIZATION FOR TRANSMITTAL:

<u>Laura Jean Lewis</u>	8/31/92
Investigator	Date
<u>Lee O. Ausen</u>	8/31/92
Criminal Investigations Department Head	Date
<u>L. Richard Torio</u>	9-1-92
Field Investigations Officer	Date

736-TCO/Kel
Revised 10/08/91
Cmrr/Law

**DEPOSITION OF JAMES R. DUDINE
IN RE: S. RES. 120**

THURSDAY, OCTOBER 19, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JAMES R. DUDINE, called for examination pursuant to notice of deposition, at 9:20 a.m. in Room 124 of the Dirksen Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, Esq.
Majority Associate Special Counsel
MARK J. BRENNER, Esq.
Majority Assistant Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

MICHAEL J. ENDLER, Esq.
Resolution Trust Corporation
1717 H Street, NW
Room 1008
Washington, DC 20434
On behalf of the Deponent.

ALSO PRESENT: TIMOTHY P. MITCHELL

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P R O C E E D I N G S

MR. BRENNER: Good morning. My name is Mark Brenner, and with me is Chris Bartolomucci with the Majority. And Mr. Kravitz for the Minority, I believe, will be asking you questions.

This deposition is conducted pursuant to Senate Resolution 120. The resolution establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Inc., the Arkansas Development Finance Authority and other related matters.

Section 1(b)2(d) of Senate Resolution 120 authorizes the investigation and public hearings into whether RTC employees have been improperly importuned, restrained or prevented from conducting investigations or making enforcement recommendations related to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation. There are a couple of other relevant sections. That's the section of primary relevance.

4

Section 1(b)3(c) of Senate Resolution 120 authorizes an investigation and public hearings into the policies and practices of the RTC and the federal banking agencies as the term is defined in section 3 of the Federal Deposit Insurance Act regarding legal representation of such agencies with respect to Madison Guaranty Savings & Loan Association.

Section 1(b)3(d) of Senate Resolution 120 -- this will be the last of the sections -- authorizes investigation and public hearings into the handling of RTC, the Office of Thrift Supervision, the Federal Deposit Insurance Corporation and the Federal Savings and Loan Insurance Corporation of civil or administrative actions against parties regarding Madison Guaranty Savings & Loan Association.

Could you state your name for the record, please.

MR. DUDINE: My name is James R. Dudine.

MR. BRENNER: This deposition -- you were requested to testify on October 6, 1995. This deposition is in advance of public hearings to be

1 held in November and you may likely be asked to come
2 testify at those hearings.

3 I will ask a series of questions. I'll ask
4 you to testify under oath. If you don't understand a
5 question, please let me know and I'll rephrase it.
6 If you need a break, feel free to just let me know.

7 The stenographer will prepare a record of
8 questions and answers. The deposition will be
9 treated as committee confidential until the
10 commencement of the hearings. Prior to the hearings,
11 you will receive a letter from the committee telling
12 you that you may come to the Senate to review the
13 transcript of your deposition and make note of
14 corrections for the transcript on an errata sheet.

15 If you're called to testify at the public
16 hearing, you will be permitted to have a copy of your
17 deposition transcript four days in advance of the
18 hearings. You may be represented by counsel.

19 Objections to the form of the question will
20 be noted for the record. Counsel may object on
21 grounds of privilege or relevance. The committee
22 chairman may rule on the objections where the witness

1 refuses to answer the question.

2 Do you want to swear in the witness,
3 please.

4 Whereupon,

5 JAMES R. DUDINE

6 was called as a witness and, having first been duly
7 sworn, was examined and testified as follows:

8 EXAMINATION

9 BY MR. BRENNER:

10 Q Again, could you state your name for the
11 record.

12 A James R. Dudine.

13 Q And are you represented by counsel here
14 today, Mr. Dudine?

15 A No.

16 MR. BRENNER: And I'm sorry, you are, sir?

17 MR. ENDLER: Michael Endler, counsel for
18 the Resolution Trust Corporation.

19 BY MR. BRENNER:

20
21
22

1 Q And what is your present business address?

2 A 801 17th Street, Northwest.

3 Q And your present position?

4 A I'm the director of the office of
5 investigations, Resolution Trust Corporation.

6 Q Could you just give me a brief rundown on
7 your employment history.

8 A I was employed out of college by the
9 Federal Deposit Insurance Corporation as a bank
10 examiner. I served as a bank examiner in the Chicago
11 region, mainly examining banks in Indiana and
12 Illinois up to 1977, at which time I was offered and
13 accepted a position for the FDIC in Washington.

14 From that time, I was involved in a
15 division of supervision in the section that advised
16 the director and dealt with policy issues on criminal
17 referrals, money laundering, other related type
18 issues, disclosures, bank examination reports,
19 municipal dealers and securities operations, things
20 of that nature. I became the chief of that section,
21 I believe, in the early '80s. I'm not sure the
22 date -- it was '83, I believe.

1 In 1989, in December, I left that position
2 and assumed the position I still hold with the
3 Resolution Trust Corporation.

4 Q And what does this job entail, your current
5 position?

6 A Well, maybe I should start with the
7 original intent of the position.

8 The Resolution Trust Corporation came into
9 being in August of 1989. There had been an interim
10 group of people who were dealing with failed savings
11 and loans prior to that date. Legislation was
12 finalized in August of 1989. I was asked to come
13 over in December.

14 Essentially, the nucleus of the RTC
15 organization was already in place, and it was
16 developed on a model that the FDIC used, particularly
17 related to financial investigations. When I joined
18 the agency, there had already been -- there were
19 already some 15 to 16 investigative units in place in
20 various field offices.

21 Initially, my responsibility was to begin
22 to try to standardize some of the procedures, provide

1 policy guidance and program guidance to those
2 investigative units in the field offices. We also
3 had a regional office structure.

4 The people in those field units reported up
5 through what we called the business side of the
6 agency, but for policy reasons, for policy purposes,
7 they reported to a staff person in the regional
8 office. That staff person in the regional office
9 reported to a regional director. There was kind of a
10 dotted reporting line arrangement to me in
11 Washington, so essentially I was there as a policy --
12 to communicate policy, develop and communicate policy
13 and standard procedures to those units in the field.

14 Over time, that role changed a bit, but I
15 think it's fair to say that essentially what we tried
16 to do was create a more cohesive unit, standardized
17 policies, gradually replace FDIC policies with RTC
18 policies as we determined -- we developed what we
19 considered to be different or better ways to deal
20 with certain things.

21 Q So it would be fair to say, then, that was
22 pretty much what you were doing during March of 1992

10

1 up until the very beginning of 1994?

2 A That's correct.

3 Q Did things change a little as the
4 transition came into being in the beginning of 1994?

5 A As a result of the RTC Completion Act,
6 which was passed, I believe, at the end of 1993, the
7 investigative -- the office of investigations or all
8 of the investigative functions were to be merged into
9 the legal division. And at that point, I began
10 reporting to someone in the professional liability
11 section.

12 Q Who did you report to in the professional
13 liability section?

14 A Thomas Hines.

15 Q Who had you reported to previously during
16 the investigation section?

17 A Previously I reported to the vice president
18 of operations, who was Ed Mahaney with a strong
19 reporting line to the senior vice president for
20 substantive matters, who was Bill Roelle.

21 Q At some point did you become aware of the
22 Senate committee's document request to the RTC in

1 this particular matter, and have you searched your
2 files for responsive documents, notes, reports and
3 memoranda?

4 A Yes.

5 Q Have all the responsive documents been
6 produced?

7 A To the best of my knowledge, yes.

8 Q Have you spoken to anyone other than your
9 counsel prior to this deposition with regard to this
10 particular deposition -- sorry. I know there's been
11 more than one.

12 A I had some conversations with Ken Donohue,
13 who was a member of my staff, who was on the list. I
14 also discussed essentially -- I had some discussions
15 with Richard Iorio in Kansas City, but they were
16 mainly logistical kinds of discussions.

17 Q Approximately when did you speak to
18 Mr. Iorio about this deposition?

19 A I spoke to him on Monday.

20 Q Have you ever been deposed before?

21 A Yes.

22 Q And when were you deposed and by whom?

1 A I was deposed by the House Banking
2 Committee -- do you have the date?

3 MR. ENDLER: It was hot. I remember that
4 much.

5 THE WITNESS: I believe it was July.

6 MR. KRAVITZ: That doesn't narrow it down
7 too much.

8 THE WITNESS: I don't know the actual date.

9 MR. ENDLER: I believe you all have the
10 transcript.

11 MR. BRENNER: Yes.

12 MR. ENDLER: That, I assume, reflects the
13 date.

14 BY MR. BRENNER:

15 Q Have there been any other depositions?

16 A I don't know -- I guess you could call it a
17 deposition. It was a recorded interview with the
18 Inspector General's office of the Treasury and the
19 RTC, and that would have been at the end of this
20 summer of '94.

21 Q Was that in relation to the investigation
22 they were conducting for the Office of Government

1 Ethics?

2 A Yes.

3 Q Could you tell me basically what a criminal
4 referral is.

5 A A criminal referral is a standard term used
6 in the financial services industry. Since about the
7 middle of '85, there's a standard form, and generally
8 standard regulations apply to criminal referrals of
9 bank fraud and embezzlement matters throughout the
10 industry.

11 The form is brief and asks for various
12 statistical information. There's the standard that
13 needs to be met, and the referral -- essentially, the
14 referral is a vehicle to notify the Justice
15 Department of a potential violation of usually Title
16 18 of the U.S. code, bank embezzlement, check kiting,
17 general bank fraud, those kinds of violations that
18 occur in banks and savings and loans all the time.

19 The referral -- the regulations require
20 that the referral be made if there's a reasonable
21 basis for believing that a crime has been committed
22 or attempted. That reasonable basis is generally

14

1 something, I believe, more than a suspicion, but
2 certainly doesn't require any absolute proof.

3 There are time limits set out in the
4 regulations for the industry itself. 30 days, I
5 believe, 30 days of discovery to report a criminal
6 referral has to be filed. We have followed in the
7 RTC those types of guidelines, the same kind of
8 guidelines that an institution -- an operating
9 institution would be required to follow.

10 A referral can be a brief notification, or
11 it can be a well-developed case. Nevertheless, it's
12 something that should be filed quickly, and the
13 intent is to let the U.S. Attorney in the local
14 district know that a crime has been discovered and
15 put them on notice if they wish to begin an
16 investigation, they can do so.

17 Q And who at the RTC would do the groundwork
18 to prepare a criminal referral?

19 A Usually, the investigators working for the
20 RTC would do the groundwork to prepare a criminal
21 referral. That isn't to say that lawyers and other
22 people that are on contract to the RTC would, in some

1 cases, pull together information, and they were also
2 instructed that criminal referrals need to be made
3 when any evidence of a potential violation was
4 discovered. By and large, usually, the investigators
5 would prepare the criminal referrals.

6 Q And before June of '93, what was the
7 process of how the referrals were sent to Justice;
8 meaning after they were prepared by the investigator,
9 what happened next?

10 A We had a system of -- in the field offices
11 of criminal referrals -- of criminal coordinators
12 established in the investigations offices. The
13 criminal coordinator generally would review any
14 criminal referrals that were made by -- prepared by
15 an investigator to lend some quality control to the
16 process. And someone in the field office, perhaps
17 the criminal coordinator and perhaps a managing
18 investigator above the criminal coordinator, would
19 sign the referral and send it to the U.S. Attorney's
20 office and to the FBI.

21 Q That was usually done in the field offices?

22 A Yes.

1 Q Were there any reasons why a referral would
2 be sent to Washington before being sent to the
3 Department of Justice?

4 A Only for advice, consultation.

5 Q I want to focus your attention on the first
6 Madison referral, in particular. I believe it was
7 C0004. When did the Madison Guaranty referral come
8 to your attention?

9 A I believe that referral came to my
10 attention very close to the time that it was being
11 transmitted to the U.S. Attorney's office, and my
12 recollection is that was sometime in August of '92.

13 Q And that was the first you'd heard anything
14 about it?

15 A I had some general knowledge that facts
16 were being pulled together in the Kansas City office
17 up to that point in time, but I don't recall any
18 specific knowledge of the matters in that referral
19 until about the time that it was prepared and ready
20 to go.

21 Q When were the referrals sent to you -- I
22 should begin by asking, did you see a copy of the

1 referrals?

2 A I saw a copy of the referral, but after it
3 was transmitted to the U.S. Attorney's office.

4 Q Do you know approximately the date of the
5 criminal referral?

6 A Again, I believe it was in August of '92,
7 but I'm not certain of the date.

8 Q How many, just as a ballpark, criminal
9 referrals have you seen?

10 A I have looked at hundreds of referrals,
11 some in more depth obviously than the others.

12 Q When you looked at referrals, did you
13 sometimes make personal decisions as to whether or
14 not they met the standard enunciated for a criminal
15 referral?

16 A Well, initially, in the first couple of
17 years, in my position with the RTC, I reviewed a
18 number of referrals, particularly larger ones and
19 more sensitive ones. Again, this is after they had
20 already been transmitted and reviewed, just not only
21 to keep myself informed of what type of things were
22 being referred, but also to take a look to see

1 whether or not I felt that the information in the
2 referrals was up to our standards.

3 Q Would you say that the 1992 Madison
4 referral met your standard for a criminal referral?

5 A It did, yes.

6 Q When you received that referral, did you
7 provide a copy of that to anyone else in the RTC?

8 A I recall providing a copy to Mr. Roelle,
9 who's the senior vice president at that time for
10 institution operations and sales, I believe.

11 Q So would that be in early September?

12 A It was probably the day I got the copy from
13 the field office, so it was probably early September.

14 Q In the preparation and the subsequent
15 transmission of the referrals in the Madison case,
16 was there anything different? Was it treated in any
17 way differently than other referrals?

18 MR. KRAVITZ: Could you read that question
19 back?

20 (The reporter read the record as requested.)

21 MR. KRAVITZ: You mean as far as he was
22 aware.

1 MR. BRENNER: As far as he is aware, yes.

2 THE WITNESS: Initially, I assume you're

3 speaking to the time period when the referral was
4 turned over to the U.S. Attorney. My understanding
5 is it was handled pretty much the same as all the
6 others.

7 BY MR. BRENNER:

8 Q Was the information in that referral
9 protected more so than the information in other
10 referrals?

11 A Yes.

12 Q Were you aware who was involved in
13 preparing the referral?

14 A I was generally aware, yes.

15 Q And who was that?

16 A The primary preparer was L. Jean Lewis, an
17 investigator from the Kansas City office and her
18 immediate supervisor, Lee Ausen, who was the criminal
19 coordinator in Kansas City.

20 Q Do you know who Ms. Lewis and Mr. Ausen
21 report to?

22 A Yes, to Richard Iorio.

1 Q Who does Mr. Iorio report to?

2 A Then he reported to -- "then" being in
3 '92 -- he reported to the vice president for
4 operations in Kansas City, James Thompson.

5 Q Does the RTC's involvement in the handling
6 of the referrals end when they send them to the
7 Department of Justice?

8 A I'm sorry, could you repeat that.

9 Q Once the referrals are sent to the
10 Department of Justice, does the RTC just leave it
11 alone and not do any follow-up?

12 A No. We have -- we encourage follow-up. We
13 have -- one of the primary roles of our criminal
14 coordinators in the field office are to do liaison or
15 maintain liaison with the law enforcement people in
16 the various jurisdictions. They attend local bank
17 fraud working group meetings where other agencies
18 participate with the FBI and someone from the U.S.
19 Attorney's office.

20 They try to maintain a continuing dialogue
21 with people in those offices to determine the status
22 of the referrals that have been made and stand ready

1 to assist in any way they can if the prosecutor feels
2 they need some assistance from our agency.

3 Q Would it be typical to track the referrals
4 through follow-up phone calls to the Department of
5 Justice?

6 A Yes.

7 Q Who was in charge of tracking the first
8 Madison referral, C0004?

9 A Normally, that responsibility, as I
10 understand it, would be the responsibility of the
11 criminal coordinator.

12 Q And do you know who that was at that time?

13 A That would have been Lee Ausen.

14 Q Was the tracking of C0004 or the follow-up
15 any different from other case tracking after it went
16 to the Department of Justice?

17 A I would say it was somewhat different.
18 I've learned this somewhat later on, looking back,
19 for a couple reasons. One, I think the criminal
20 coordinator himself did not perform that well, but
21 the investigator, Jean Lewis, was actually making
22 follow-up phone calls and some of the contacts would

22

1 be made directly from the field office to the Justice
2 Department in Washington, which is not typical.

3 Q As you understand the process of the
4 Department of Justice relating to criminal referrals
5 from the RTC, was it their standard practice or
6 common practice to handle the criminal referrals in
7 Washington or in the satellite offices?

8 A Well, normally, they would be handled by
9 the U.S. Attorney in the local office. There are
10 always situations where, for one reason or another,
11 an attorney or the U.S. Attorney, himself or herself,
12 in the office can recuse. Sometimes they would ask
13 for assistance from Washington if the particular
14 referral involved something that was very complex or
15 maybe something that involved other offices outside
16 of their area. The fraud section in Washington may
17 get involved.

18 Q If that were the case, if it were sent to
19 Washington to, say, the fraud section or for some
20 other reason, would it be typical to do the follow-up
21 phone calls from the RTC to Washington?

22 A Normally, the follow-up -- and I'm

1 searching for any situation where we actually
2 followed up on cases from Washington, from my office
3 in Washington. I don't know if any of the follow-up
4 would continue from the local offices.

5 Q I guess I should rephrase the question.

6 While the RTC Kansas City office would
7 still do the follow-up in a case that ended up in the
8 fraud section in Washington, it would not be
9 atypical, but rather it would be typical for them to
10 call Washington to DOJ, Department of Justice, in
11 Washington to do the follow-up?

12 MR. KRAVITZ: Have you established whether
13 he even knows of any other case where that happened,
14 before you ask him what's typical?

15 THE WITNESS: I guess the typical
16 arrangement is that the attorney -- if an attorney
17 from the fraud section is assisting on a local case,
18 that attorney would normally be working with someone
19 from the local office. So the contact in those cases
20 would normally go from our office to the local U.S.
21 Attorney's office.

22 BY MR. BRENNER:

1 Q If the local U.S. Attorney's office had no
2 record of a particular referral and Mr. Ausen or
3 somebody else who was in charge of trying to track
4 the referral had to find out where it was, would it
5 be unusual for them to call the Department of Justice
6 in Washington?

7 MR. KRAVITZ: I'm going to object to that
8 question. It's inconceivable to me that this has
9 happened enough times for this witness to be able to
0 say whether something is typical or not.

1 MR. BRENNER: He stated it was atypical
2 that somebody from the field office would call
3 Washington. And while that may be true, I think it's
4 also atypical for a referral to be trading hands nine
5 or 10 different times within the Department of
6 Justice. So I'm establishing that this was not the
7 typical case, that this was atypical from the start.

8 MR. KRAVITZ: That's not what you've asked
9 him. You've asked him about a situation in which the
0 local branch of the Justice Department, i.e., the
1 United States Attorney's office tells somebody at the
2 RTC that they don't know where the referral is.

1 Would it then be typical to call the Justice
2 Department?

3 I mean, I think before you ask the witness
4 to state an opinion as to what's typical or not, you
5 first ought to establish that he's ever experienced
6 another situation or he's heard about any other
7 situation in which someone from an RTC field office
8 has been told by someone in a local United States
9 Attorney's office that they don't know where the
10 referral is. How can you ask --

11 MR. BRENNER: That's fine.

12 MR. BARTOLOMUCCI: Mr. Dudine has so far
13 shown no problem handling these questions. I think
14 if he lacks a basis for answering, he'll say so. But
15 thus far, he seems to exhibit very good knowledge to
16 these questions and I would leave it to him to say
17 when he doesn't have sufficient knowledge to answer a
18 question as posed.

19 MR. KRAVITZ: That's fine, if you would
20 leave it to him. I have the right to make objections
21 as to the form of the questions.

22 MR. BARTOLOMUCCI: You're not his counsel,

26

1 though.

2 MR. KRAVITZ: I'll agree with you on that
3 point. The other point that you need to understand
4 is that there's been a long-standing rule at all
5 these depositions that one lawyer on each side asks
6 questions and makes objections, and so I really think
7 we ought to follow that rule in this deposition as we
8 have in all the others.

9 BY MR. BRENNER:

10 Q Have you heard of another case where the
11 local U.S. Attorney's office is in no way familiar
12 with a referral that had been received by them?

13 A I'm not aware of any other case.

14 Q So this would be an atypical situation?

15 A Again, there may well be another
16 situation. I'm just not aware of that.

17 (Pause.)

18 Q You're not aware of another case. Is that
19 what you said?

20 A That's right.

21 Q Were you involved in tracking the criminal
22 referral?

1 A No.

2 Q With the hundreds of referrals that you've
3 seen, what is your understanding of how a criminal
4 referral in the RTC is handled by the DOJ?

5 MR. KRAVITZ: I'm sorry, I couldn't hear
6 that.

7 MR. BRENNER: Could you please read the
8 question back.

9 (The reporter read the record as requested.)

0 MR. KRAVITZ: Thank you.

1 THE WITNESS: My general understanding --
2 and again, this is based on the fact that most of the
3 contacts and follow-ups are done from the local
4 office to the local U.S. Attorney's office, and I
5 become aware of generally how those relationships are
6 being carried out. I would say that there are
7 certain areas and offices that handle referrals
8 expeditiously. There are other jurisdictions that do
9 very little with the referrals. It kind of runs the
0 gamut. We get good responses, quick responses from
1 some offices, virtually no responses from other U.S.
2 Attorneys offices.

1 BY MR. BRENNER:

2 Q What was your understanding from talking to
3 Mr. Iorio and Mr. Ausen as to how the U.S. Attorney
4 in Arkansas was ranked in terms of responding to the
5 RTC for the Eastern District in the period before
6 September of 1993 -- before September of 1992?

7 A Well, my understanding -- again, it's just
8 a general understanding based on information that was
9 being provided to me from out there, was that that
0 was an office that was fairly responsive to RTC
1 criminal referrals.

2 Q By "fairly responsive," does that mean they
3 had a reasonable turnaround time in terms of making a
4 decision on an RTC referral?

5 A Again, I'm relying on general information
6 about criminal referrals that were made in Arkansas
7 and those that were followed up on and investigated.
8 Based on that general awareness, I believe that the
9 attorneys and agents in the particular district were
0 responsive to our referrals.

1 Q Could you tell me, as you understand it,
2 what happened with criminal referral C0004 once it

1 was sent to the Department of Justice?

2 MR. ENDLER: Mark, can I ask one question?

3 Jim obviously has learned a lot about a lot of these
4 things after the fact, and I assume your question is
5 pointed towards what he knew at that time.

6 MR. BRENNER: I guess. I guess I'll just
7 rephrase the question.

8 BY MR. BRENNER:

9 Q During the course of late 1992 and through
10 the better part of the first nine or 10 months of
11 1993, what knowledge did you have of the handling by
12 the Department of Justice of C0004?

13 A At that time, during that period, I had
14 virtually no knowledge of how that referral was being
15 handled. The only contact or indication that I
16 recall from the Justice Department came in probably
17 late October of '92 when I learned that the FBI in
18 Washington had at least looked at the referral or had
19 seen it. I had no indication from them at that point
20 in time whether it was actually referred from the
21 Little Rock to Washington, but I did know that FBI
22 agents in Washington had seen the referral.

30

1 Q Is this the first referral you had heard of
2 where the FBI in Washington had looked into the
3 referral?

4 A Well --

5 Q To the best of your recollection.

6 A I'm not aware of any others. However,
7 there very well may have been referrals that were
8 looked at in the Washington office. I kind of
9 stepped back from that interaction -- let me explain
10 this way.

11 I used to attend national bank fraud
12 working group meetings and did through the first few
13 months when I was at the RTC, and I stepped away from
14 that, so I didn't have that day-to-day interaction
15 with the Justice Department people in Washington
16 where I may have learned about what they were looking
17 at. On that basis, I'm really not aware of any
18 others that they were looking at.

19 Q I want to focus a little bit on the policy
20 of the RTC in terms of allowing investigators to
21 contact the Department of Justice. Is there a policy
22 that forbids -- during the period of 1992 and 1993,

1 was there a policy that forbade investigators from
2 contacting the Department of Justice?

3 A Not that I'm aware of.

4 Q In fact, isn't it the case that it was
5 often encouraged for investigators to be in contact
6 with the Department of Justice?

7 A Yes.

8 Q And why is that?

9 A Well, the usual arrangement for that kind
10 of contact would be so that an investigator could
11 provide additional information to the prosecutor
12 about a particular case that was referred, and we
13 encouraged them to communicate freely about those
14 matters so that we could assist them in whatever they
15 needed to bring to initiate an investigation or to
16 bring a prosecution.

17 Q And in the case of C0004, that investigator
18 was Ms. Lewis?

19 A That's right.

20 Q When did you learn that the Department of
21 Justice had refused the criminal referral of C0004?

22 A I learned of it, I believe, to the best of

1 my recollection, the day the letter arrived at Kansas
2 City, the declination letter, and I'm not certain of
3 the date of that, but I believe it might have been
4 November or late October, November.

5 Q Late October, November?

6 A November of '93.

7 Q And how did you learn of this?

8 A I believe -- I recall a conversation with
9 Mr. Iorio.

10 Q Have you, since then, seen a copy of the
11 declination letter from the U.S. Attorney's office?

12 A I have seen a copy, yes.

13 Q Were you surprised that this case was
14 declined?

15 A No, I wouldn't say I was surprised, no.

16 Q But, as you stated earlier, the standard
17 the RTC uses for deciding to refer a case you believe
18 was met in the case of C0004?

19 A The standard for referring the case, I
20 believe, was met, yes.

21 Q And the primary work in preparing that case
22 was by Jean Lewis?

1 A That's my understanding, yes.

2 Q And one of the reasons you encouraged the
3 RTC investigators to contact the Department of
4 Justice or to remain in contact with the Department
5 of Justice is because they're the most knowledgeable
6 in terms of the facts of a particular case at the
7 RTC?

8 A That's a fair statement, yes.

9 Q I'd like to turn your attention for a
10 minute to the second set of criminal referrals. Did
11 the declination of C0004 by the U.S. Attorney in
12 Little Rock end the investigation into Madison?

13 A Well, I assume I have my dates correct
14 here, but the other referrals -- there were
15 additional referrals by the time the declination
16 letter was delivered to Kansas City. Additional
17 referrals had already been prepared and may have even
18 been sent over to the U.S. Attorney's office, so the
19 answer to that question is the investigation
20 obviously was continuing before the declination
21 letter was received.

22 Q After the referral C0004 had been sent to

1 the U.S. Attorney in 1992, what, to your knowledge,
2 was going on in terms of continuing to investigate
3 the Madison case?

4 A To my knowledge at that time -- I guess the
5 best of my recollection at that time was, I was not
6 aware of additional investigation going on in late
7 '92. I became aware sometime in '93 that additional
8 facts had been learned and mainly two additional
9 referrals, but my recollection is that was sometime
10 in the spring of '93.

11 Q How did you learn about that?

12 A I recall it was probably through my
13 conversation with Mr. Iorio at some point around that
14 time, I recall, discussing those things with
15 Mr. Thompson, the vice president. It was through one
16 or both of those conversations that I learned of the
17 additional -- the potential for additional referrals.

18 Q Did you pass on the information you had
19 received from Mr. Iorio about the ongoing
20 investigation at the RTC?

21 A I remember passing on some information to
22 Mr. Roelle sometime in '93, again, probably the

1 spring, late spring, and my recollection is that
2 Mr. Thompson and I had a conversation. I then passed
3 on information to Mr. Roelle in the form of a note.
4 For some reason he was not in the office. I dropped
5 a note off in his chair.

6 Q Could you give me the names of the general
7 counsels or acting general counsels at the RTC
8 between the time of June of 1992 and March of 1994.
9 I apologize. I know that's possibly the dates.

10 MR. KRAVITZ: You get a gold star if you
11 get that right.

12 MR. ENDLER: Somebody ought to object to
13 that question just on principle alone.

14 THE WITNESS: I could maybe work backwards.

15 BY MR. BRENNER:

16 Q That will be perfect. I just want that for
17 the record. I apologize.

18 A Glion Curtis served as acting general
19 counsel, I believe, from sometime the 1st of October
20 through the end of '93. Prior to that Richard
21 Aboussie served as acting general counsel. I don't
22 really know and I'm not real confident at what point

1 in time Mr. Aboussie assumed that role and what point
2 in time Jerry Jacobs, who was the general counsel,
3 left.

4 Q That's terrific, actually. Who came after
5 Glion Curtis as acting counsel or general counsel?

6 A I believe Ellen Kulka was appointed general
7 counsel and came on board sometime in late January of
8 '94. There's a period in there between the time, I
9 believe, that Glion Curtis left and before Ellen
10 arrived that someone else may have actually served.
11 I'm not certain of that.

12 Q After hearing about the investigation, the
13 ongoing investigation after the first referral had
14 already been sent, did you request from Mr. Iorio or
15 anyone else that you receive a copy of the second set
16 of referrals?

17 A I did make that request, but it was after
18 they had already been prepared in September of '93.

19 Q I'd like to focus your attention on the RTC
20 directive from June 17, 1993. Could you explain to
21 me what that directive was.

22 A The directive issued in June of 1993 was an

1 attempt to formalize our policy on -- our general
2 policy on handling criminal referrals. It was an
3 outgrowth of a criminal coordinators' conference that
4 was held in January of 1993. This was a joint
5 conference attended by legal, criminal coordinators
6 and investigative criminal coordinators.

7 As I stated earlier, part of my role and
8 responsibility was to try to pull together various
9 operating procedures and standard ways of doing
10 things in the agency and also to promote cooperation
11 between the investigators and the lawyers in the
12 field. Part of the reason for this document was to
13 try to ensure that there was better coordination
14 between lawyers and investigators on criminal
15 referrals.

16 And one of the requirements in that
17 document was that a criminal coordinator from the
18 legal side review criminal referrals prior to their
19 being sent to U.S. Attorneys offices. That was a
20 change in the way things were being done in some
21 offices.

22 Nevertheless, I recall that we had a

1 discussion at that conference, and we attempted to
2 arrive at a general consensus among the attendees
3 there on how best to implement that kind of a change
4 in procedure. And at least in my mind, I believe
5 that we gave the offices a good deal of latitude to
6 work things out among themselves, but that there
7 would need to be a requirement that referrals be
8 reviewed by legal criminal coordinators before they
9 were sent to U.S. Attorneys offices.

10 Q And was that June 17th directive effective
11 immediately?

12 A Yes, in my view.

13 Q Between June 17th, 1993 and early October
14 of 1993, are you aware of any cases that the RTC
15 Kansas City office had reviewed for a legal opinion?

16 A I'm not -- I'm not aware of any, but I
17 really don't know how many criminal referrals, if
18 any, were prepared during that time period.

19 Q When it came to implementing the June 17th
20 directive in reference to the second set of Madison
21 referrals, was there agreement between all parties in
22 Kansas City on how that should be done?

1 MR. KRAVITZ: You're asking him based on
2 his personal knowledge, or are you asking him to
3 testify about what he's heard?

4 MR. BRENNER: Based on his personal
5 knowledge.

6 BY MR. BRENNER:

7 Q Were there any problems or any differences
8 of opinion --

9 A I wasn't aware of any differences of
10 opinion until these particular referrals came to my
11 attention.

12 Q And what was the difference of opinion in
13 reference to the second set of Madison referrals?

14 A Again, my understanding is -- and how I got
15 pulled into this process was that for some reason,
16 the application of a policy -- that June 17th policy
17 was being viewed differently by lawyers and
18 investigators or legal managers and investigative
19 managers in Kansas City.

20 I'm still not clear on what the main
21 difference of opinion was, whether there's a
22 contention that there was no review required by the

1 policy or the depth of the review that had been
2 required by the policy. In any event, I became aware
3 of that difference of opinion after those referrals
4 were prepared prior to them being distributed to the
5 U.S. Attorney.

6 Q Who was involved in conducting the legal
7 review of the nine criminal referrals in the Madison
8 case, the second set of referrals?

9 A The legal review normally would be
10 conducted by the legal criminal coordinator who at
11 that time was Karen Carmichael.

12 Q Could you briefly explain to me what a
13 legal review is.

14 A Well, again, the intent of the policy was
15 to primarily make sure that people in the legal
16 division were aware of a criminal referral, that a
17 criminal referral was about to be sent and generally
18 aware of the factual situation supporting that
19 criminal referral. So if for some reason that
20 factual pattern, those transactions were also being
21 looked at by a civil lawyer somewhere, there would be
22 coordination before the referral went to the U.S.

1 Attorney's office.

2 And two, to try to get the legal criminal
3 coordinator to coordinate, cooperate more with the
4 investigative criminal coordinator to generally try
5 to improve the quality of our referrals and also the
6 quality of whatever follow-up we could provide.

7 That instruction, again, coming from the
8 discussion at the criminal coordinators' conference,
9 I believe, at least in my mind, was really to be a
10 consultation with the legal criminal coordinator and
11 does not impose any kind of requirement for the legal
12 coordinator to approve, edit, whatever in that
13 particular referral. It was mainly to be a
14 consultation so everybody was on board with what was
15 happening. And obviously, if we could improve the
16 quality of the referral, that would be the final
17 outcome of that consultation.

18 Q Have you sat in on any consultations after
19 the new directive?

20 A I did not sit in on any consultations in
21 the field between any criminal coordinators or
22 legal -- or investigative criminal coordinators, no.

1 Q Were most of those consultations verbal
2 consultations between the investigations unit and the
3 legal unit?

4 A I would say that's a fair statement based
5 on my understanding of what went on. However, I
6 haven't done a lot of research of what occurs in
7 other offices.

8 Q This particular consultation with regard to
9 the second set of Madison referrals was a written
10 consultation, wasn't it?

11 A Yes.

12 Q And up until the point of seeing that
13 written consultation, had you seen any other written
14 consultations from any of the other offices?

15 A No.

16 Q I'd like to ask you who Mr. Gamble is.

17 A Mr. Carl Gamble is a senior attorney --
18 counsel, I guess -- I'm sorry?

19 MR. ENDLER: I think his position is
20 counsel.

21 THE WITNESS: Counsel in the professional
22 liability section of the RTC. He is essentially the

1 RTC's specialist on criminal matters.

2 BY MR. BRENNER:

3 Q Did you speak to Mr. Gamble about the
4 second set of referrals?

5 A I did, yes.

6 Q What, in fact, was said?

7 A When I asked for the referrals to be sent
8 to Washington so that I could take a look at them, I
9 wanted to do -- I wanted Mr. Gamble's opinion on
0 whether or not the content of the referrals was
1 something that met our standards and therefore, could
2 be transmitted to the U.S. Attorney in the normal
3 course of business.

4 So I asked Mr. Gamble to look through those
5 referrals and give me his advice. He did that. And
6 then he and I had a discussion with the
7 investigators -- the investigative managers and the
8 criminal coordinator in Kansas City.

9 Q Was that done on all criminal referrals?

0 A That was done with the nine criminal
1 referrals from Madison.

2 Q But with regard to all other referrals,

1 other than the Madison?

2 A No, not usually.

3 Q Would it be a fair characterization to say
4 that the RTC was moving very carefully with regard to
5 dealing with the Madison referrals?

6 A Well, when you say the RTC, at that point
7 in time, the people involved, at least to the best of
8 my knowledge, was a very small group and had any
9 situation like this come up in any other
0 circumstance, I believe we would have handled it the
1 same way.

2 In other words, I would have asked for
3 advice from Carl Gamble because that is his role and
4 I certainly trusted his experience and knowledge in
5 this area. So any type of dispute where the legal
6 criminal coordinator in the field for some reason --
7 if there was any kind of difference of a opinion with
8 the legal criminal coordinator in the field, I would
9 go to Carl and ask for his assistance in mediating
0 that dispute.

1 Q How often did that happen?

2 A It happened occasionally, and I have no

1 real recollection of specifics, but occasionally in
2 the context of discussions about certain things, I'm
3 only really aware of one other situation where he and
4 I and others actually specifically reviewed matters
5 carefully. It was not a normal -- it would not be in
6 the normal course of business.

7 Q Approximately when, in chronology, when
8 would you say your discussion with Mr. Gamble about
9 the referrals occurred?

10 A To the best of my recollection, it was
11 sometime in late September, probably the 28th, 29th,
12 sometime in that week of September.

13 Q Was Mr. Gamble the only person you spoke to
14 about these referrals, or did you speak to people in
15 the Kansas City office?

16 A I was speaking with people in the Kansas
17 City office during this period, yes.

18 Q Could you tell us the substance, to the
19 best of your recollection, of the conversations you
20 were having?

21 A The referrals were prepared, and as I
22 understand it, set to be sent -- ready to be sent to

1 the U.S. Attorney's office. The vice president in
2 Kansas City, who at that time was Mr. Cavanaw, had
3 made a notification to Mr. Roelle in Washington that
4 these referrals were going to be transmitted, and I
5 apparently gave Mr. Roelle certain information about
6 some of the names, some of the suspects and some of
7 the general indication of the types of violations
8 that were known to be referred.

9 I had very brief discussions with
10 Mr. Roelle about those referrals and with people in
11 Kansas City, who then informed me about this
12 difference of opinion with the legal criminal
13 coordinator and that the process was getting bogged
14 down a little bit.

15 Q After having these discussions and looking
16 at the referrals and speaking to Mr. Gamble, did you
17 feel that the referrals met the enunciated standard?

18 A In my view, they met the standard, yes.

19 Q In making that decision, did you look at
20 the legal review?

21 A This was prior to seeing the legal review.

22 Q After the legal review was prepared, did

1 you receive a copy of it?

2 A I did, yes.

3 Q And did you find it useful?

4 A I didn't find it all that useful.

5 Q Was there anything in the June 17th
6 directive that we spoke about earlier that dealt with
7 whether investigators should contact U.S. Attorneys?

8 A To the best of my recollection, there's
9 nothing in there that addresses that.

10 Q During September and October of 1993, did
11 you have weekly briefings on PLS, professional
12 liability section matters?

13 A Yes.

14 Q And what was generally discussed at those
15 meetings?

16 A There were two briefings. One to deal with
17 large claim matters, where the senior vice president,
18 Mr. Roelle at the time, and the general counsel had
19 authority to make decisions on certain matters
20 involved in civil cases. Generally, those were
21 professional liability claims, but also other types
22 of claims would come before that group that was

1 generally a Wednesday briefing.

2 There was another meeting held dealing with
3 lower level claims, in which I had authority and
4 maybe during that period as deputy general counsel, I
5 would have had authority to pass on certain civil
6 claims. Those were the two primary meetings.

7 Q Do you recall having a discussion after one
8 of those PLS meetings with Mr. Curtis and Mr. Hinds
9 regarding the Madison referrals?

10 A I recall a very brief discussion of the
11 referrals, or the fact that the referrals were
12 prepared with Mr. Roelle. Mr. Curtis was there. I
13 believe Mr. Hinds was there.

14 It was a very brief exchange of comments
15 along the lines of Mr. Roelle saying are we handling
16 those referrals, and I responded something to the
17 effect that we're conducting -- we're conducting our
18 review, and they should be distributed shortly. That
19 was about the extent of that conversation.

20 Q Was that the only discussion that you
21 recall where you and Mr. Curtis were in the same
22 discussion with regard to Madison?

1 A During that point in time, that's the only
2 discussion that I recall.

3 Q What happened with the 1993 referrals after
4 they were prepared and ready to be sent to the
5 Department of Justice?

6 A Well, they were ultimately sent to the
7 Department of Justice on October 8th, I believe.

8 Q And do you know what happened with those
9 referrals after they went to the Department of
10 Justice?

11 A Well, they went through a series of -- the
12 Department of Justice at one point -- I don't know
13 exactly when -- assigned a prosecutor from Washington
14 to handle the case. And then later the referrals
15 were turned over to an independent prosecutor,
16 Mr. Fiske, and then ultimately to Mr. Starr, the
17 Independent Counsel.

18 Q I'd like to focus on Ms. Lewis and
19 Ms. Lewis's role in the Madison investigation.

20 MR. ENDLER: Mark, before we do that, can
21 we take a very short bathroom break.

22 (Recess.)

1 BY MR. BRENNER:

2 Q When did you first have any dealings with
3 Jean Lewis with regard to the Madison referrals?

4 A I really haven't had any dealings directly
5 with Jean Lewis.

6 Q But you're familiar with Ms. Lewis?

7 A Yes.

8 Q And how is that?

9 A I have met her. I've obviously read some
10 of her work. I'm familiar with her through
11 conversations with Mr. Iorio primarily.

12 Q What was your impression during the course
13 of the investigation of the work that Ms. Lewis had
14 done on the Madison referrals?

15 A Could you repeat that.

16 MR. BRENNER: Could you read the question
17 back, please.

18 (The reporter read the record as requested.)

19 THE WITNESS: I assume you're talking about
20 any time during the entire investigation?

21 BY MR. BRENNER:

22 Q Yes.

1 A Not during the first --

2 Q Any time during the entire investigation.

3 MR. KRAVITZ: Just so it's clear, do you
4 mean during the RTC stage of the investigation, or do
5 you mean up until today?

6 MR. BRENNER: I mean during the RTC stage
7 of the investigation.

8 THE WITNESS: My impression of her work was
9 that it was pretty solid work, that she clearly knew
10 how to follow transactions and documents and put
11 together a decent criminal referral.

12 BY MR. BRENNER:

13 Q Do you know of any awards or accolades that
14 Ms. Lewis received for her work on the Madison
15 referrals?

16 A I have a general awareness of some of the
17 awards that were given by the Kansas City management,
18 but I couldn't specify them.

19 Q Do you think Ms. Lewis was dedicated to her
20 work when she worked at the RTC?

21 A I have no reason to believe otherwise.

22 Q Do you think that Ms. Lewis believed that

52

1 there was serious wrongdoing at Madison?

2 A Again, my perception would be yes.

3 Q When you said earlier the standards were
4 the standards for investigating the referrals to the
5 Department of Justice, isn't that saying that
6 Ms. Lewis's work was up to the RTC's standards, as
7 you viewed it?

8 A Obviously again, the way our system is
9 established with criminal coordinators, you provide
10 quality control and all of that. I don't know to
11 what extent her work was reviewed and edited, but I
12 think generally that's a fair statement.

13 Q Were you satisfied with Mr. Iorio's work on
14 the Madison case?

15 A Again, we're talking about the referrals,
16 in preparing the referrals?

17 Q Yes.

18 A Generally, yes.

19 Q Do you recall writing a letter of
20 commendation to Mr. Iorio with regard to his work on
21 the Madison case?

22 A No, I do not recall writing such a letter.

1 Q I'm going to show the witness a document
2 that's Bates stamped TM 1229. It is an E-mail to
3 Glion Curtis from Tom Murray. I've got a series
4 here. And I'd like to ask the witness to read the
5 E-mail.

6 A I will read just the text of the E-mail.

7 Q Yes, please.

8 A "Well, here is something that stinks.

9 Cheryl, Nancy and Gary have received three days off
10 with pay for an award for their hard work. What
11 stinks is obvious in the above, but beyond that,
12 Allen Corbett didn't get one. He has been
13 instrumental in helping on the Madison project and
14 deserves one as well as anyone else. Any
15 suggestions, please let me know.

16 "On a related but less important level,
17 Julie told me that Richard Iorio received a letter
18 congratulating him on his Madison work from Dudine,
19 and that the letter is prominently on display in his
20 office. I'll have to check my mail more closely for
21 mine. What stinks about this is not the nonreceipt
22 by me. I really don't care. The thing I don't like

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1 is that Richard hasn't advanced anything on the civil
2 side and has made messes for us to clean up on the
3 criminal side. And for this, he gets a letter from
4 my superior. What does Dudine think of what I'm
5 doing? Sorry for the ranting. Anyway, if you think
6 I should call Dudine or Richard about Allen, please
7 let me know."

8 Q Does that refresh your recollection at all
9 of the letter that was sent by you to Mr. Iorio?

10 A Apparently, and this has come up in prior
11 testimony, still to the best of my recollection,
12 there's no such letter commending Mr. Iorio on his
13 work on the Madison matter.

14 Q Did there come a time in November 1993
15 where you became aware that Jean Lewis had been
16 removed or had stepped aside as the principal
17 criminal investigator on the Madison Guaranty matter?

18 A Yes.

19 Q How did you become aware of that?

20 A Well, I believe I became aware through
21 general discussion with Mr. Iorio, probably directly
22 from Mr. Iorio.

1 Q Was she the only person removed from her
2 role on the Madison Guaranty investigation at that
3 time?

4 A As I recall, that was sometime in late '93,
5 November, perhaps. And a decision was made by the
6 managing people in Kansas City to remove Jean Lewis
7 and also Karen Carmichael from the Madison matter.
8 Karen Carmichael was the legal criminal coordinator.

9 Q And why were they both removed?

10 A It was my understanding that we were
11 experiencing some problems -- or at least we were
12 hearing some complaints from the FBI primarily that
13 document production was not occurring as promptly as
14 they would like.

15 Also, at that time, apparently, I learned
16 of a possible personality conflict between Jean Lewis
17 and Karen Carmichael. They were having difficulty
18 working together. Obviously, they had to work
19 together very closely in order to meet the demands of
20 the Justice Department, and it was felt -- and I
21 concurred by the managers out there -- that it might
22 be better to bring some new people into that process.

1 Q Was it your understanding at that point,
2 though, that Ms. Lewis would still be involved in the
3 Madison case?

4 A It was my understanding she would be
5 involved certainly as a resource because she had the
6 most knowledge of anyone about the facts of the case.

7 Q You spoke earlier -- you stated that Ellen
8 Kulka came into the RTC in January of 1994?

9 A Yes.

10 Q And what was her position?

11 A General counsel.

12 Q Did Ms. Kulka make any changes in the role
13 of the Kansas City office with regard to document
14 productions?

15 A When Ms. Kulka came in, she really wanted
16 to manage the Madison matter from Washington rather
17 than from the field. So she created a task force of
18 Washington lawyers and a couple of investigators.
19 And as a part of that role, the entire case was to be
20 managed out of Washington, and she wanted to
21 establish communication -- a channel of communication
22 through the people in the task force for any matters

1 involving Madison.

2 Q And who was on the task force?

3 A The task force was headed by Mark
4 Gavrellian, who was a senior counsel in the
5 professional liability. There were several lawyers
6 initially on the task force. Terry Arbit. April
7 Breslaw was initially part of the task force. I'm
8 certain I'm missing some people, I'm sure, from
9 investigations. Initially, Gary Watts from my staff
10 and Tom Murray were assigned to the task force.

11 Q You said Ms. Breslaw was originally part of
12 the task force?

13 A Yes.

14 Q And did there come a time when she left the
15 task force?

16 A Yes, she did, I believe.

17 Q And when was that?

18 A I don't know exactly. She was involved for
19 two or three weeks.

20 Q Do you have any information as to why
21 Ms. Breslaw was removed or left the task force?

22 A I wasn't involved in that decision.

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1 Q Had you heard after the fact or in any way
2 became aware in more general terms of why that change
3 had been made?

4 A I mean, I can only -- my assumption is
5 Ms. Breslaw had become a central figure in the whole
6 Madison affair, and it was probably felt that it
7 would make more sense to take her out of that
8 limelight.

9 Q Did Mr. Jack Ryan come to the RTC at about
10 the same time?

11 A Jack Ryan came, I believe, earlier than
12 Ms. Kulka. I would say maybe the second week in
13 January, something like that.

14 Q What was Mr. Ryan's position?

15 A His position was the deputy chief executive
16 officer.

17 Q And did you brief Mr. Ryan on the status of
18 Madison?

19 A There were a couple of sort of collective
20 briefings when he first came on that I attended and
21 provided some information.

22 Q And do you recall talking to him at all

1 about the Whitewater Development Corporation?

2 A I recall generally trying to explain that
3 Whitewater was an account, a demand deposit or
4 checking account at Madison, that our investigators
5 had discovered funds being misapplied and flowing
6 through that account, and the account was a -- the
7 account holders were Jim McDougal and his wife and
8 Mr. Clinton and his wife.

9 Q Did you brief Ms. Kulka on Madison?

10 A Yes, I did.

11 Q And did you mention to her Whitewater
12 Development Corporation?

13 A That was part of the discussion and
14 briefing, yes.

15 Q Was Ms. Breslaw ever present for either of
16 those briefings?

17 A My recollection is that Ms. Breslaw was
18 involved in some of those briefings. I'm not exactly
19 certain when or at what point, but I believe that she
20 was involved at one point or another, yes.

21 Q As you understood it, what was
22 Ms. Breslaw's role, or what was her position in

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1 relation to Madison?

2 A She was the original line attorney -- or
3 PLS attorney assigned to the Madison case.

4 Q Did there come a time when you learned that
5 Mr. Iorio expressed concerns about Ms. Breslaw's
6 continued involvement in the Madison case?

7 A Yes. I believe Mr. Iorio expressed some
8 concerns about Ms. Breslaw during this time, because
9 certain conflicts of interest involving the Rose Law
10 Firm had come up. And I believe it was in that
11 context that Mr. Iorio suggested that he didn't feel
12 real comfortable with Ms. Breslaw staying involved in
13 that matter.

14 (Pause.)

15 Q What, in particular, were Mr. Iorio's
16 concerns as you understood them to be about
17 Ms. Breslaw's involvement?

18 A I believe his concerns were related to the
19 Rose Law Firm's conflicts of interest in the Madison
20 matter where Ms. Breslaw was the original attorney
21 that hired the Rose Law Firm and had managed the
22 investigation that led to a settlement with the

1 accounting firm in the matter, that Mr. Iorio felt
2 that those conflicts of interest somehow would -- and
3 again, I'm speculating on what his real problems with
4 that were -- but that she may have been involved in
5 some of those conflicts with the Rose Law Firm, and
6 therefore would not be an objective -- maybe would
7 not have taken an objective view in the follow-up
8 review of some of those same matters relating to
9 Madison.

10 Q Were you familiar during this period of
11 time with Ms. Breslaw's decision to choose the Rose
12 Law Firm and the subsequent problems related to the
13 conflicts?

14 A During that point in time, I believe I was
15 aware of some of it. Obviously, a lot more
16 information has come out since that point in time,
17 but I was aware that she was the line attorney, that
18 she had hired the firm, and to a certain extent I
19 shared the view that perhaps it would be better to
20 have someone who is unrelated to the case involved in
21 this particular task force.

22 Q Did you discuss your viewpoint with anyone?

1 A I recall mentioning it to Mr. Hindes, and I
2 think I mentioned it in the context as a general
3 management philosophy, my preference would be to
4 bring somebody in who's unrelated to the matter.

5 Q Did there come a time when the Kansas City
6 office was told to cease work on further criminal
7 investigation of Madison?

8 A There was a time when probably in February
9 of '94, somewhere in that time frame where
10 instructions were relayed to the people in Kansas
11 City, and I believe it was done by the task force
12 members when they met with people out in Kansas City,
13 as well as I relayed those instructions verbally to
14 Mr. Iorio.

15 Q Did the task force make the decision to
16 issue that request?

17 A That request came from general counsel.

18 Q And the general counsel was?

19 A Ellen Kulka.

20 Q Did Ms. Kulka further instruct you that the
21 task force would now take over all the Madison work?

22 A Generally, I believe that was the

1 instruction, yes.

2 Q Were there similar task forces for other
3 investigations?

4 A There have been task forces from time to
5 time in the past, but to my knowledge, this is the
6 only one that I'm aware of that was handled directly
7 by the general counsel.

8 Q So at this point, the handling of the
9 referrals and dealing with now the Independent
10 Counsel, this was not your typical handling by the
11 Resolution Trust Corporation?

12 MR. KRAVITZ: You mean as of 1994 when this
13 occurred?

14 MR. BRENNER: Yes.

15 THE WITNESS: I think that's true, but the
16 point is there were a lot of things handled
17 differently with the general counsel.

18 BY MR. BRENNER:

19 Q Was the primary responsibility of the task
20 force to coordinate with the Independent Counsel?

21 A The primary purpose of the task force?

22 Q Yes.

1 A Initially, the task force was established
2 to review the overall situation in Madison to
3 determine whether or not additional claims could be
4 brought, civil claims. During this period of time,
5 certainly when the Completion Act was passed, a
6 statute of limitations was extended, revived actually
7 in the case of Madison. And later that year, that
8 revived statute was extended to the end of '95. So
9 there were potential claims revived that there for a
10 while had been dead.

11 The primary role of the task force was to
12 review the situation to determine whether or not the
13 RTC should bring additional claims against the
14 directors, officers, professionals or others
15 associated with Madison.

16 Q At this point in time, though, hadn't it
17 been established that there was no directors and
18 officers insurance, and therefore, no deep pocket to
19 pursue litigation against Jim McDougal or others?

20 A Well, the recommendations -- the prior
21 recommendations from people who had conducted those
22 investigations were essentially that the recovery

1 sources were limited. And generally, as a result of
2 that, any action against the directors and officers,
3 particularly would not appear to be cost-effective.

4 Q Would the advent of this new task force,
5 did this foreclose Ms. Lewis or other investigators
6 in Kansas City from working on anything having to do
7 with Madison?

8 A Well, the instruction as it was relayed was
9 essentially one of -- the task force will assume the
10 role of intermediary between the Kansas City
11 investigators and the Independent Counsel or anybody
12 else outside. The Independent Counsel obviously had
13 need to contact the investigators and find documents
14 and obtain information about the case that only was
15 available from people who had worked on the case, so
16 they needed to be involved in that sense, following
17 up, assisting the Independent Counsel. The
18 instruction was that that assistance was to be
19 funneled through contact people in the task force.

20 Q Did you agree with that decision?

21 A The structure of the task force and
22 establishing procedures like that were a very clear

1 departure from the way we had already operated in
2 cases dealing with the Justice Department.
3 Nevertheless, I understood that it's certainly one
4 way of handling this type of investigation. I knew
5 it wouldn't be well received in Kansas City, but
6 that's what the instructions were.

7 Q Did you agree with them?

8 A Whether or not I agreed with it I don't
9 think is important.

10 Q Did Mr. Fiske want direct access, as far as
11 you know, to some of the investigative staff?

12 MR. KRAVITZ: Do you mean did Mr. Fiske
13 request direct access?

14 MR. BRENNER: I mean, does the deponent
15 know if Mr. Fiske had ever expressed a view or the
16 Independent Counsel's office had ever expressed a
17 view that they felt this new task force procedure was
18 overly burdensome to them.

19 THE WITNESS: I have no direct knowledge of
20 that. My understanding is that some people that were
21 working for Mr. Fiske preferred to deal directly with
22 people in Kansas City. And that ultimately, some of

1 those restrictions were relaxed to permit a more
2 direct flow of information between the Kansas City
3 investigators and the Independent Counsel.

4 BY MR. BRENNER:

5 Q Did there come a time when the Washington,
6 D.C. office was concerned with leaks of RTC
7 information to the press?

8 A Yes. There were press inquiries coming
9 directly to investigators and others who were working
10 on the criminal referrals during the period that the
11 legal review was actually being conducted prior to
12 the referrals being distributed to the U.S.
13 Attorney's office.

14 So we were aware, and management in the RTC
15 were aware that certain reporters knew something
16 about what was going on, so we were concerned about
17 press leaks, although I don't believe any press
18 stories actually pointing to the criminal referrals
19 came out until much later in November, sometime after
20 the referrals were sent. We were concerned about the
21 possibility of that happening all during this period.

22 Q And you believe that the leaks came from

1 the Kansas City office?

2 A Again, at this point, we were talking about
3 potential leaks, and we were talking about that we
4 were experiencing press inquiries. So the potential
5 for leaks to the press appeared to be great, and
6 certainly the people in Kansas City were the folks
7 with the most knowledge about the referrals.

8 Q Were there actual leaks?

9 A I'm not aware of any actual leaks.

10 MR. KRAVITZ: I'm sorry. Was that question
11 focused on specifically leaks to the press as your
12 earlier question?

13 MR. BRENNER: Yes. I'm sorry, leaks to the
14 press.

15 MR. KRAVITZ: And was that limited to a
16 certain time period? I want to make sure
17 Mr. Dudine's answer is clear as to which question
18 he's responding to.

19 BY MR. BRENNER:

20 Q During the year 1993, up until the time
21 that the referrals had been sent to the Department of
22 Justice, the second set of referrals, were there any

1 actual leaks to the press?

2 A I'm not aware of any leaks to the press
3 from Kansas City investigators or any investigators,
4 for that matter.

5 Q Were you aware of any other leaks to the
6 press?

7 A During that period, there were stories that
8 appeared in certain newspapers that seemed to contain
9 information that could have only come from the
10 criminal referral or somebody who had knowledge of
11 certain criminal referrals.

12 The best of my recollection is, having
13 looked at those, recalling those stories, that that
14 information could very well have come from the first
15 referral or people who had dealt with the referral
16 for 1992.

17 Q By the time there was concern about the
18 leaks from the 1992 referral, the 1992 referral
19 itself had been a fairly widespread rumor at RTC,
20 hadn't it? I could define the question a little
21 more, if you'd like.

22 It wasn't solely or exclusively in the

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1 possession of the Kansas City office?

2 A It was not, but it was also not widely
3 distributed within the RTC.

4 Q But it had made its way to Washington?

5 A Yes.

6 Q I wanted to talk just briefly about some of
7 the document production, and I want to know if you
8 could discuss the working group related to Madison
9 document productions.

10 A This was the group that resulted from --
11 which set up procedures for producing documents to
12 the, at that time, the Justice Department which would
13 have been Mr. Mackay and his group?

14 Q Yes.

15 A Generally, that occurred because I believe
16 someone from the FBI headquarters called the RTC, and
17 again, I don't recall exactly whether that call went
18 to Mr. Roelle's office or whether it came into my
19 office. I became aware of it from Mr. Donohue on my
20 staff who handles liaison with the FBI. Essentially,
21 the FBI in Washington had learned that their local
22 office or the office in Little Rock felt that

1 document production coming from the RTC wasn't as
2 prompt as they would have liked.

3 And so I assigned Mr. Donohue to go to
4 Kansas City and get together the appropriate people
5 and see if they couldn't work it out, some sort of a
6 process whereby everybody would feel comfortable
7 about what we were doing. We'd get done what we
8 needed to get done. The FBI would get their
9 documents as soon as possible.

10 And there was a meeting -- there were a
11 couple of meetings out there, including the local FBI
12 people. Mr. Mackay, I believe, was there.
13 Mr. Donohue, Ms. Yanda. Phil Adams at that time, I
14 believe, had replaced Karen Carmichael and others
15 from the RTC office, and a procedure was put in place
16 to expedite the production of documents to the FBI.

17 Q This wasn't the usual course of dealing
18 with document requests related to referrals, was it?

19 A Again, we have had problems with producing
20 documents to the Justice Department, and we would
21 always try to deal with them in a similar manner, try
22 to get the parties together and work out some way to

1 meet everybody's needs.

2 Generally, when we have parallel
3 proceedings going on, there's generally conflicts
4 about criminal versus civil demands for the
5 documents. So there have been a number of situations
6 where special procedures had to have been put in
7 place dealing with documents.

8 Q It would seem to me that special procedures
9 had to be put into place with regard to the Madison
10 referrals on a number of different levels. Is that a
11 fair statement?

12 A It's a fair statement, but the special
13 procedures again, are needed as well in any big case
14 where there's a tremendous demand for documents
15 coming from various parties all at the same time.

16 Q Did you have any discussions with G. Allen
17 Carver regarding production of documents from the RTC
18 Kansas City office to the FBI?

19 A I don't recall any discussions with Allen
20 Carver on the specific topic. I may have because
21 Mr. Carver is the person who I would talk to, if I
22 needed to, in the fraud section, but I don't recall

1 anything specifically related to Madison, no.

2 Q Were some of the document production
3 issues, which prompted this Mackay group, problems
4 with the PLS section productions?

5 A Again, the legal criminal coordinator would
6 be reviewing some of the documents prior to their
7 being distributed -- delivered to the FBI. It was my
8 understanding that that review by the legal division
9 out there was slowing down the process. That's not
10 unusual. I mean, that occurs in many of these
11 cases. That problem, I think, was also exacerbated
12 out there because some of the documents were in
13 Overland Park, and the others were in downtown Kansas
14 City, and the lawyers were in Overland Park, and the
15 investigators were in Kansas City.

16 Q Were you familiar with any situations where
17 Ms. Lewis provided any RTC documents to Congressman
18 Leach?

19 A Yes.

20 Q And how did you learn of that?

21 A Well, I believe I learned of that at about
22 the time when Congressman Leach made an announcement

1 on the House floor.

2 Q Did you contemplate administrative actions
3 against providing Congressman Leach with any such
4 documents?

5 A We had some discussions about that.

6 Q And who was involved in those discussions?

7 A I recall discussions with the general
8 counsel and probably Mark Gavrellian and probably Tom
9 Hindes about the fact that that would clearly seem to
10 be an unauthorized disclosure of information. We
11 went on to discuss also the idea of the whistle
12 blower protection that Congressman Leach referred to
13 and whether or not that protection would extend in a
14 situation like that.

15 Q Did there come a time in 1994 when
16 Ms. Lewis, Mr. Iorio and Mr. Ausen were placed on
17 administrative leave?

18 A Yes.

19 Q And when was that?

20 A It was in August -- I believe it occurred
21 on August 15th. I'm not certain of that, but I
22 believe that's the date.

1 Q How did you learn of the administrative
2 leave?

3 A I learned through a phone call from Doris
4 Garrett in my office. I was on vacation at the time,
5 and Doris called me, probably Monday, and said, guess
6 what, these people in Kansas City were put on
7 administrative leave.

8 Q So you were not involved?

9 A I was not involved.

10 Q Who in the Washington RTC, to the best of
11 your knowledge, ordered the administrative leave?

12 A I don't know who ordered it. I know that
13 Tom Hindes signed the letter that was given to those
14 people, but I really don't know who ordered it.

15 Q Did you speak to Mr. Hindes about this
16 issue?

17 A I've spoken to him just briefly about it,
18 not in any depth.

19 Q Did you get the impression from talking to
20 Mr. Hindes he was not the one making the decision to
21 place these people on administrative leave?

22 A My impression is that he did not make the

1 decision.

2 Q Why did you have that impression?

3 A Well, for a couple of reasons. Normally,
4 the way -- I think the way the administrative
5 procedures at least in the agency, the official who
6 actually delivers the message is normally not the
7 decisionmaker, and my impression just in the way
8 Mr. Hindes explained what he had done was that he
9 really did not make the decision.

10 Q And what was the substance of the
11 allegations that had been made against Mr. Iorio,
12 Mr. Ausen and Ms. Lewis?

13 A I don't know.

14 Q You don't know now, or you didn't know
15 then?

16 A I didn't know then. I still do not know.

17 Q I believe we spoke earlier about your
18 belief in the job they were doing with regard to
19 Madison, and you did believe that they had done a
20 good job in the Madison case?

21 A I believe that they did a good job in
22 developing the referrals. And up until the point

1 when Jean Lewis turned the documents over to
2 Congressman Leach, I felt that they were doing their
3 job.

4 Q Do you know what role, if any, Julie Yanda
5 played in the leave issue?

6 A I don't know.

7 Q Do you know of anyone else in the Kansas
8 City PLS section who played a role in the
9 administrative leave issue?

10 A No, I'm not aware of anyone playing any
11 role in that.

12 Q Could you tell us who Andy Tomback is?

13 A Andy Tomback is the deputy general counsel
14 for litigation.

15 Q Are you aware of the fact that Mr. Tomback
16 offered to the RTC IG offered to search the offices
17 of these three people while they were on
18 administrative leave?

19 A I was not aware of that.

20 Q Are you aware of any contacts between the
21 RTC and the White House related to any of the
22 referrals?

1 A Was I aware at the time?

2 Q Were you aware at the time?

3 A No.

4 Q Have you since become aware of any
5 contacts?

6 A I believe that there was a contact from
7 Mr. Katsanos to a press person at the White House
8 that I read about in the paper or heard from some of
9 the proceedings in the hearings, but that's the only
10 thing I'm aware of.

11 Q My last question before Mr. Kravitz gets an
12 opportunity to speak is during the 1993 or 1994 --
13 during any time in 1993 or 1994, did you have any
14 communications with Webster Hubbell about any topics?

15 A No.

16 MR. BRENNER: Thank you. I apologize. I
17 was reminded of a couple more questions I had to
18 ask.

19 BY MR. BRENNER:

20 Q Did you have any contacts with CEO Altman
21 about briefing him on the Madison criminal referrals?

22 A No contacts with CEO Altman.

1 Q Did you have any contacts with anyone from
2 CEO Altman's office about briefing him?

3 A About Madison?

4 Q About Madison.

5 A No.

6 Q I want to show you a document Bates
7 numbered RI 0104. It's a highly confidential
8 document, and it's an E-mail to Richard Iorio from
9 you, Friday, January 14, 1994. I was hoping you
10 could read that into the record.

11 A "I'm sending this E-mail to save on the
12 phone bill in preparation for a briefing of CEO
13 Altman on the Madison criminal referrals. Could you
14 produce or have you on hand a brief summary of each
15 referral in plain English that tells the story in a
16 way that anyone could quickly grasp the substance of
17 the matter. Sound bytes, if you will."

18 Q Do you recall what prompted you to write
19 this E-mail?

20 A Yes, I do. My recollection is that I
21 received a call or in a discussion with Mr. Katsanos,
22 again, who is our communications officer, that he

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1 said something like you know, somebody is probably
2 going to have to brief Altman on this matter at some
3 point in time. He said I don't know who's going to
4 do that, but you might think about it.

5 So as a result of that, having reviewed
6 those referrals myself, and they were very difficult
7 for someone -- a layperson particularly, just to pick
8 up and read and understand, I felt if I was going to
9 have to brief somebody at some point, it would be
10 nice to have some summaries. And as a result of
11 that, that was the call I got from Katsanos. I asked
12 Mr. Iorio for some summaries and I later had some
13 summaries prepared by someone on my staff but I was
14 never asked to brief anyone.

15 MR. BRENNER: Can we go off the record for
16 one second, please.

17 (Discussion off the record.)

18 MR. BRENNER: That's all I have for now.

19 MR. KRAVITZ: Why don't we go off the
20 record.

21 (Discussion off the record.)

22 (Whereupon, at 11:55 a.m., the deposition

1 was recessed, to be reconvened at 1:30 p.m. this same
2 day.)
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1 AFTERNOON SESSION (2:03 p.m.)

2 Whereupon,

3 JAMES R. DUDINE

4 resumed the stand and, having been previously duly
5 sworn, was examined and testified further as follows:

6 EXAMINATION

7 BY MR. KRAVITZ:

8 Q Mr. Dudine, are you familiar with a process
9 by which the RTC field offices consider which failed
10 savings and loan institutions they're going to focus
11 their investigative resources on?

12 A Well, I think that's kind of a complicated
13 question. Over the period of the RTC, many
14 institutions had already closed and essentially had
15 received some sort of a preliminary investigation
16 before the RTC even came into existence, so there's a
17 number of institutions. Many of those in Arkansas
18 fall into that category. They were already taken
19 over and sort of sitting there when RTC started up.

20 We developed a process later on, mainly
21 focused on new takeovers, and essentially that was to
22 try to allocate as many resources as we could at the

1 time of the takeover and to do a broad investigation
2 from some point as close to the takeover date as we
3 possibly could.

4 Q When was it that this approach you've just
5 been describing was put into place by the RTC?

6 A I think it was probably sometime in mid-'90
7 or late 1990 by the time everybody was staffed up and
8 we began to get to a critical mass of people where
9 you could begin to deal with takeovers in that kind
10 of a fashion.

11 Q Is it fair to say at that time, mid- to
12 late 1990, the people at the RTC recognized that they
13 simply did not have sufficient resources to conduct
14 thorough investigations of all of the institutions
15 that had failed both in the past and in the recent
16 past?

17 A Oh, sure. I think we recognized that from
18 the beginning.

19 Q And that priorities needed to be set in
20 terms of where to put those limited resources and
21 what types of cases?

22 A That's correct.

1 Q What were the factors -- strike that.

2 Was this a formal policy that you've just
3 been describing, or was it more kind of an informal
4 approach to be followed in each field office in
5 determining which institutions to focus investigative
6 resources on?

7 A I would call it more an informal management
8 process. We had a national view of the institutions
9 where certain very large, very complicated high
10 visibility institutions were clearly high profile
11 from a national perspective. And each office
12 employed some kind of a similar process to deal with
13 the other institutions under their control.

14 Q What were the factors that were to be
15 applied by field offices in determining which failed
16 institutions within their regions should receive
17 priority in terms of investigative resources?

18 MR. BRENNER: Neil, I just wanted to
19 clarify. Are you talking about how they prioritize
20 once they make the determination they're going to
21 make a thorough investigation of such a group, or is
22 this the point where they determine whether or not

1 they're going to make a thorough investigation?

2 MR. KRAVITZ: Let me rephrase the question
3 to try to make it even more clear.

4 BY MR. KRAVITZ:

5 Q What I'm trying to get at, as of mid- to
6 late 1990, when this new approach was put into place
7 by the RTC, what factors were the RTC field offices
8 told to consider in determining which failed
9 institutions to investigate?

10 A We wanted to investigate all institutions.

11 Q But you couldn't because you didn't have
12 enough resources?

13 A That's right. At some point -- maybe it
14 was late '90, maybe it was somewhere around there --
15 we did have enough resources to approach prospective
16 takeovers in that manner, so that every institution
17 that was going to be taken over in late 1990, 1991
18 would receive a broad, thorough investigation
19 covering not only potential for PLS claims, but also
20 we tried to take a look at our civil fraud, borrower
21 fraud and take a look at the criminal potential all
22 at the same time.

1 Q And the approach, then, was, as of late
2 1990, those institutions to be taken over in the next
3 year would have a higher investigative priority than
4 institutions that had been taken over previously?

5 A That's fair.

6 Q And the reason for that approach was what?

7 A Well, again, given limited resources and
8 the fact that many of the institutions that had
9 already been taken over were already -- the
10 professional liability claims were generally already
11 identified and were being pursued by an outside law
12 firm.

13 Q Or had been investigated and closed?

14 A And closeouts had been recommended, that's
15 correct.

16 Q As in the Madison case?

17 A That's right.

18 Q I'm sorry. I didn't mean to interrupt.

19 A Now, those institutions -- the borrower
20 fraud potential, borrower fraud claims and additional
21 criminal referrals in many of those institutions,
22 those two aspects weren't looked at at all in some

1 areas by the group of people that did the initial
2 investigation. That group of people were people that
3 were pulled together during the S&L management
4 program before the RTC existed.

5 So they got a very cursory review to focus
6 mainly on just potential PLS claims. Most of the
7 offices created a process, then, to go back when
8 their resources became available to take sort of a
9 relook at those institutions for possible criminal
10 referrals that weren't made or needed to be made or
11 from a civil fraud aspect.

12 Q What was the RTC's approach in this regard
13 in terms of prioritizing its investigative resources
14 as of late 1991, after this approach had been in
15 effect for approximately a year or more?

16 A Well, I think the process was pretty much
17 the same from an overall standpoint, but it was --
18 those decisions on prioritizing those matters were
19 really left to the people in the field offices as to
20 how they were going to allocate their resources.

21 But I think again, we're an agency that was
22 established to recover money, recover funds for the

1 taxpayers, and we would try to use wherever possible
2 the potential for recovering funds as the primary
3 factor on setting priorities.

4 Another factor would be, of course, statute
5 of limitations, time periods and things like that.

6 Q So consistent with setting priorities, at
7 least in part, based on the potential for recovering
8 funds, is it accurate to say that one factor in
9 setting priorities would be the size of loss
10 resulting from the failure of an institution, just
11 one factor?

12 A It might be, although it doesn't always
13 hold that the size of loss will yield recovery
14 potential on a particular claim, and there's some
15 examples of thrifts that had sizable losses where we
16 didn't feel we had good potential for claims.

17 Q Obviously, if there's no fraud or other
18 cause of action, the size of the loss is irrelevant.

19 A That's right.

20 Q But would you agree if all other things are
21 equal, when the RTC looks at two institutions that
22 have failed, if all other things are equal, the

1 institution that fails at a greater loss to the
2 taxpayer, that's a factor to be considered in
3 determining which of those two institutions the RTC
4 wants to focus its resources on?

5 A Generally, the larger the institution, the
6 more complex -- not necessarily the amount of loss,
7 because many times we didn't really know at the early
8 stage what the losses were likely to be, but
9 certainly the size of the institution itself created
10 more complexities requiring greater resources.

11 Q And similarly, the perceived likelihood of
12 proving fraud would be a factor in the RTC's
13 determination as to which institutions to focus its
14 limited resources on; is that right?

15 A That's difficult to say because we really
16 don't know -- before you make any assessment of the
17 likelihood of fraud until you get into it.

18 Q Do you know who Clark Walton is?

19 A I believe I do. An investigator out of the
20 Tulsa office; am I correct?

21 Q I actually don't know.

22 A The reason I'm hesitating is he goes by a

90

1 different first name. I'm trying to think.

2 Q Tim tells me that he believes that Clark
3 Walton was an investigator in the Tulsa office at
4 least as of late 1991. Is that consistent with your
5 memory?

6 A Consistent. I believe, you know, he's
7 generally known by some other first name.

8 Q You're familiar with someone who's an
9 investigator in the Tulsa office in 1991 with the
10 last name Walton?

11 A Yes.

12 Q Did you know that Jean Lewis, at least back
13 in December 1991, was going by the name Jean Brennan?

14 A I'm aware of that, yes.

15 Q I'm going to show you a two-page document
16 dated December 11, 1991. It's a memorandum from Jean
17 Brennan to Clark Walton. The subject is "referral
18 schedule." And there's actually two Bates numbers on
19 it. One is S/AT 0050 to 0051. Then there's another
20 number on here, 004594 and 004595.

21 For our purposes, why don't we use the S/AT
22 0050 number.

1 MR. BRENNER: There's an S slash? I'm not
2 familiar with that Bates stamp numbering. 0050?

3 MR. KRAVITZ: Right.

4 MR. BRENNER: Thank you.

5 BY MR. KRAVITZ:

6 Q I'm going to show you this document. Why
7 don't you take a minute to look through it.

8 A Okay.

9 Q Have you ever seen that document before
10 today?

11 A I don't recall having seen it, no.

12 Q Were you aware that in December 11, 1991 --
13 I'm sorry, in December of 1991, that criminal
14 investigators in the Tulsa field office -- actually,
15 let me back up.

16 Back in December 1991, did the Tulsa field
17 office have jurisdiction over failed institutions in
18 Arkansas?

19 A There became a point in time when Arkansas
20 institutions were transferred from, I believe, the
21 Minneapolis office to the Tulsa office. I don't
22 recall exactly when that time period was, but I

1 assume that's consistent with those dates.

2 Q You agree that this is a memorandum in
3 December 1991 discussing the schedule for revised
4 priorities of Arkansas investigations?

5 A Yes. I might say something about those
6 priorities, though, in terms of the response to your
7 earlier questions. I was responding to our overall
8 investigative efforts. This prioritization, I
9 believe, is strictly related to looking for criminal
10 referral potential. It's really what I would
11 consider a separate prioritization from the overall
12 prioritizing of investigative resources.

13 In the Tulsa office, as in some of the
14 other offices, there were specially designated
15 investigators to look strictly at criminal matters,
16 and they pretty much worked their own -- had their
17 own separate priorities for investigation.

18 Q That's actually helpful to know. Why don't
19 we -- let me back up a little bit, then, and ask you
20 the same types of questions that I asked previously,
21 but focused more specifically on the setting of
22 priorities among criminal investigators within the

1 field offices.

2 As of December 1991 or thereabouts -- and I
3 don't mean to focus you on just one month, but in
4 that approximate time period -- what were the factors
5 that criminal investigators in RTC field offices were
6 to consider in prioritizing their limited resources
7 among the various institutions that had failed in any
8 given region?

9 A We had generally broad -- provided
10 generally broad guidance to the field offices during
11 that time, particularly for institutions that had
12 failed early in '89, that had not received a good
13 review for potential criminal violations; that when
14 resources became available, the field offices should
15 consider allocating resources to those older
16 institutions to go back and begin looking through the
17 files for potential criminal violations.

18 Now, that kind of an allocation of
19 resources would vary considerably among the offices,
20 depending on how many new institutions under their
21 jurisdiction were expected to fail, what their
22 current case load looked like. Many offices, for

1 instance, California and possibly Atlanta and Valley
2 Forge wouldn't have the luxury at that point in time
3 to allocate resources to this type of an endeavor.

4 But in Tulsa, I think Tulsa was in a little
5 bit different situation than that. The workload in
6 Tulsa wasn't nearly as demanding as a lot of the
7 other offices, and they weren't expecting a lot of
8 new institutions to fail in their jurisdiction. So I
9 believe Tulsa would have had more resources available
10 for these kinds of investigations at that point in
11 time.

12 Q Isn't it fair to say even places like
13 Tulsa, as a general matter, the top priority for
14 criminal investigations still was put on institutions
15 that either had failed recently or were expected to
16 fail in the near future as opposed to institutions
17 that had failed before the RTC came into existence in
18 mid-1989?

19 A Overall, the priority for the office, in
20 allocating its resources, the priority would be as
21 you suggested. Again, in Tulsa and in Kansas City,
22 they had a little bit different scheme where they had

1 people identified as specifically responsible for
2 criminal matters, where other offices used
3 investigators as more generalists.

4 Q We've identified the timing of the failure
5 of the institution as one factor, a major factor in
6 the determination as to how criminal investigative
7 resources were to be prioritized back in the time
8 period around late 1991.

9 What other factors also were to be
10 considered in the prioritization of limited criminal
11 investigative resources?

12 A Again, the guidance that we provided from
13 Washington was broad. And the local managers had a
14 great deal of latitude under that broad guidance to
15 allocate resources however they felt appropriate. So
16 actually in terms of how resources were allocated in
17 Tulsa at that time or how they prioritized those, I
18 don't really have a very in-depth understanding of
19 what they used to prioritize those particular
20 institutions.

21 Q Is it your testimony that there were no --
22 there weren't even any general guidelines in addition

1 to the timing of the failure of the institution
2 provided by headquarters?

3 A The general guidance was that if resources
4 became available to go back and look at older
5 institutions, that that should be done at some point
6 in time.

7 And again, if we're looking at a criminal
8 statute of limitations. It was 10 years. So there's
9 a good deal more time to go back and look for
10 additional criminal referrals than there was in
11 meeting our investigative demands for our civil
12 cases. But within that broad guidance, meet your
13 civil needs first, but if resources are available,
14 you can set your own priorities.

15 Q Let me try to get at it this way. I
16 understand that the field offices were given large
17 discretion in setting their own priorities. But
18 let's assume that on December 1, 1991, two
19 institutions in state X failed on the same day. And
20 on December 15th, the RTC field office that had
21 jurisdiction over state X determined that it had the
22 resources available to conduct criminal

1 investigations in one -- regarding one failed
2 institution in state X.

3 What factors would the RTC field office
4 look at in determining which of those two failed
5 institutions to focus its resources on?

6 MR. BRENNER: Excuse me for one second.
7 Are you asking him what the field office would
8 consider when he said he's not familiar, especially
9 with the Tulsa field offices's particular
10 priorities?

11 MR. KRAVITZ: That's a fair point. Let
12 me -- that's a fair point. Let me ask it this way.

13 BY MR. KRAVITZ:

14 Q Under that fact situation, is there any
15 guidance that came from the RTC to any field office
16 as to how to make a determination as to which of
17 those two failed institutions to investigate
18 criminally?

19 A That's a hypothetical that's really
20 difficult to address. I believe at that point in
21 time and again, we tried to standardize procedures
22 and management approaches over time, so that

1 Washington eventually had a little bit more influence
2 over how the field offices operated.

3 But at that point, the field offices made
4 those decisions, and the broad guidance was to take
5 care of your civil cases first, and within that
6 guidance was embedded the idea that the local
7 investigative manager would work together with the
8 legal managers to come up with some sort of a
9 consensus plan so that everybody felt that the
10 resources were allocated appropriately in that
11 office.

12 We also had available to us the ability to
13 contract outside resources as needed, although the
14 Kansas City office did less of that than any of the
15 other offices.

16 Q Let me show you again the same two-page
17 document, S/AT 0050 and 51. Can you tell from
18 reading this document -- and again, take as much time
19 as you need to read it. Can you tell from reading
20 this document what considerations Jean Lewis appeared
21 to have taken into account in December 1991 in
22 setting the Tulsa office's priorities for criminal

1 investigations regarding failed Arkansas
2 institutions?

3 MR. BRENNER: Neil, have we established
4 that Jean Lewis, who was then Jean Brennan, was in a
5 position of authority to determine the priorities for
6 the Tulsa office?

7 MR. KRAVITZ: The document certainly seems
8 to indicate that. It's a memorandum from her. She
9 says I have rescheduled -- for example, "I have
10 rescheduled the further investigation." She says "I
11 have attempted to schedule the investigations," and
12 she says "the following schedule will reflect the
13 revised priorities for the Arkansas investigations
14 for which I am currently responsible."

15 MR. BRENNER: These may not be for the
16 entire Tulsa office. They may just be the ones that
17 she's currently working on or that she was currently
18 working on.

19 MR. KRAVITZ: I don't know, but that's
20 certainly possible.

21 THE WITNESS: These appear to be all
22 Arkansas institutions, and it may be that Jean was

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1 assigned to Arkansas, and this could very well be her
2 priorities.

3 BY MR. KRAVITZ:

4 Q Can you tell from the text of the
5 memorandum what considerations or what factors
6 Ms. Lewis appears to have taken into account in
7 setting priorities among the Arkansas institutions?

8 A She appears to be responding to requests
9 from the FBI that a couple of institutions be looked
10 at. And I guess the other thing she seemed to be
11 scheduling investigations that are close together,
12 may be located in a particular geographic area.

13 Q Anything else?

14 A She mentions that there might be common
15 players in various institutions.

16 Q On page 2 of this memo, Ms. Lewis states
17 "other than that, I have prioritized based on joint
18 investigative efforts with the FBI and information
19 offered by the civil investigators as to how 'dirty'
20 their specific institutions appear to be."

21 Do you have a sense of what Ms. Lewis meant
22 or would have meant when she referred to how dirty

1 any of these specific institutions appear to be?

2 A Well, I mean, based on my knowledge of that
3 kind of terminology that's bantered about among the
4 investigators, probably a civil investigator, meaning
5 in that particular office, someone who worked on a
6 PLS claim during the context of that investigation
7 may have learned of potential fraud situations,
8 borrowers who may have been defrauding the
9 institution, that kind of thing, and would have
10 passed it on.

11 Q As you interpret Ms. Lewis's memo, it
12 appears that one of the factors that Ms. Lewis relied
13 on in setting the priority list was the extent to
14 which there was already -- there was fraud already
15 indicated from other evidence in the failure of any
16 given institution.

17 A She says -- that would have been -- that
18 appears to be one factor. It appears to be one
19 factor.

20 Q I was hoping maybe you could help interpret
21 this list on the first page of this document. Do you
22 have any idea what these dates mean?

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1 A I don't. I mean, I could only speculate.

2 Q Does it appear that those dates would be
3 time periods in which criminal investigations were
4 tentatively scheduled to occur?

5 A That's certainly one explanation.

6 Q Can you think of any other possible
7 explanation?

8 A I can't think of anything else at this
9 point. I was puzzled by setting an ending period
10 when you were conducting an investigation because
11 that's usually difficult to do.

12 Q In other words, you would have expected
13 there just to be a starting date, and it would be
14 open until finished?

15 A Yes.

16 Q Despite your puzzlement over that, does it
17 still seem most likely what this memorandum does is
18 set time periods or at least tentative time periods
19 which each one of the named banks or failed
20 institutions would be investigated for possible
21 criminal violations?

22 A Again, not having any -- no particular

1 knowledge of this, that certainly is one thing that
2 comes to mind.

3 Q As of the end of 1991, do you know -- let
4 me phrase it this way.

5 Do you have any knowledge now as to whether
6 there was a scheduled criminal review of the Madison
7 failure as of late 1991, early 1992?

8 A I know that there was a schedule, a general
9 schedule that was in place at some point in 1992, and
10 I've been told and understand that Madison was fairly
11 far down on that particular list, and in response to
12 a news article that came out in The New York Times,
13 the decision was made to allocate some resources to
14 Madison and ultimately move it up on the list.

15 Q What's your understanding as to why Madison
16 was relatively low on the list before the news
17 article came out in The New York Times?

18 A I really don't -- I don't really have any
19 understanding of that. I don't know how those
20 institutions were listed or prioritized, and this is
21 the first time I've seen this memo.

22 Q Well, knowing what you know about Madison

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1 Guaranty and its failure, and knowing what you know
2 about the general approach to the prioritization of
3 criminal investigative resources, can you give us any
4 insight at least as to why Madison started out near
5 the bottom of the list?

6 MR. BRENNER: I believe he already answered
7 that question by saying he doesn't know.

8 MR. KRAVITZ: He says he doesn't have any
9 direct knowledge, but this isn't a criminal case.
10 This is an experienced witness. He can tell us, if
11 he can help us analyze it.

12 THE WITNESS: There could be a number of
13 reasons. Based on this particular memo -- and I
14 don't know whether the institutions around Little
15 Rock could have been grouped -- perhaps in response
16 to some of the FBI cases that they were actively
17 working on at that point in time, they were not
18 actively working on Madison, the others who the FBI
19 asked for assistance on were apparently listed ahead
20 of it.

21 BY MR. KRAVITZ:

22 Q You testified that the Madison moved up on

1 the priority list after a news article appeared in
2 The New York Times; is that correct?

3 A That's correct, that's my understanding.

4 Q Is that the Jeff Gerth article on March 8,
5 1992?

6 A It's the Jeff Gerth article. I'm not
7 certain of the date.

8 Q What is your understanding as to who made
9 the decision first to allocate additional resources
10 to the Madison investigation following the
11 publication of the Gerth article and second, as to
12 who made the decision to move Madison up on the list?

13 A Well, I know that when the article came
14 out, various people in Washington asked for
15 information about that particular institution and
16 what our investigators may have known about some of
17 the transactions that appeared in that story.

18 Q Who asked for information?

19 A I'm not certain who did, but I know that
20 various calls were made to the regional office at
21 that time in Kansas City that likely had come from
22 senior management in Washington. A call from the

1 staffer in my office went out to the Kansas City
2 regional office at that point in time asking for some
3 additional information.

4 Q Who was that?

5 A I don't remember whether or not -- I just
6 don't recall whether or not somebody above me asked
7 me to do that or whether or not we just read the
8 story and decided that we ought to find out whether
9 or not we had investigated those matters. It's not
10 unusual any time any kind of information like that
11 came to our attention, we would ask that some -- at
12 least a preliminary investigation be done about those
13 particular matters.

14 The staffer in my office you asked about
15 was John Walker, I believe, who originally came to us
16 from Kansas City and was generally acting as a
17 liaison with the Kansas City office at that time.
18 That was the Kansas City regional office. During
19 that period we still had our regional structure, and
20 the Tulsa office was reporting into Kansas City.

21 Q Now, your testimony is that you know -- I
22 think your words were various people in Washington

1 made calls to request information. You have no
2 memory as to who it was?

3 A My memory serves me that a call was made to
4 the Kansas City -- I guess it was the regional
5 director at that point that came from somebody
6 somewhere above me after they read the story.

7 Q How many people in the RTC were above you
8 as of March 1992?

9 A Well, March of '92 --

10 MR. ENDLER: It depends on who you ask.

11 MR. KRAVITZ: I'm asking him.

12 THE WITNESS: It's very close to our first
13 major reorganization. Assuming that it was still the
14 regional structure, there was a vice president above
15 me --

16 BY MR. KRAVITZ:

17 Q Who was that?

18 A -- who at that time was Art Stow, I believe
19 and Bill Roelle.

20 Q What was his title? Was he another vice
21 president?

22 A Vice president, senior executive vice

1 president or something like that. Then the
2 organization was kind of split between operations and
3 outside sales. There were asset sales managers who
4 weren't in that reporting line, but someone from the
5 outside may well have read the article and called the
6 regional director.

7 I mean, I don't know. All I know is that
8 people from Washington called out there and asked for
9 information.

10 Q How do you know that?

11 A From talking to the investigators.

12 Q Talking to what investigators?

13 A The investigators that --

14 Q Let me ask this question. Who told you
15 that someone higher up than you in RTC Washington
16 called out to the Kansas City regional director
17 seeking information following publication of the
18 Gerth article in March 1992?

19 A I don't know that anybody actually told me
20 that. I learned that somehow over the last several
21 years, either from discussions with people in the
22 field who would have responded to that call or from

1 documents that I've read.

2 Q What type of information was requested?

3 A It was, as I understand, just an open-ended
4 what do we know about this situation, these
5 transactions.

6 Q What was done by the people in Kansas City
7 after that request was made from some of the
8 higher-ups in Washington?

9 A It was my understanding that a preliminary
10 inquiry was made, and I don't know exactly whether
11 that was somebody who called Jean Lewis and asked if
12 she -- since that institution was assigned to her at
13 that time -- whether she knew anything about these
14 transactions.

15 At some point -- I don't know whether that
16 was immediately or not -- I believe Ms. Lewis was
17 asked to go review some files, gather some
18 information. She began gathering some information,
19 found some documentation supporting those
20 transactions. That then later led to that first
21 criminal referral.

22 Q Who made the decision to -- strike that.

1 At some point Madison actually was moved up
2 on the priority list and resources that were
3 initially targeted for criminal investigations of
4 other institutions were applied to criminal
5 investigation of the Madison case; correct?

6 A I think that's correct, yes.

7 Q And that would be sometime in the spring,
8 summer 1992?

9 A Right.

10 Q Who made that decision?

11 A My assumption is that decision was made by
12 probably Richard Iorio, but possibly by someone who
13 reported to him. At that time, I think, it was still
14 Lee Ausen. I'm not certain if that's where Lee was,
15 but I believe that was him.

16 Q You don't know who made the decision to
17 leapfrog Madison above other institutions on the
18 priority list?

19 A Specifically, no.

20 Q And it's your assumption, based on your
21 knowledge of the way the Kansas City field office and
22 the rest of the RTC works, that it was either Iorio

1 or Ausen who made that decision?

2 A That's my understanding, yes.

3 Q To your knowledge, did anyone from outside
4 the Kansas City field office have any input into the
5 decision to advance the criminal investigation of
6 Madison following the Gerth article?

7 A To my knowledge, no.

8 Q To your knowledge, this was a decision that
9 was made exclusively by Kansas City field office
10 officials?

11 A To my knowledge, yes.

12 Q What information came back to the
13 higher-ups, the senior people in Washington following
14 their request for information?

15 A I recall that there was some information
16 that came back almost immediately that was sort of
17 cursory information about yes, in fact, these counts
18 are here, and some general information, I believe,
19 and this is -- my recollection is vague on this,
20 about McDougal and his plight at the time and all of
21 that, but not much more than that initially.

22 Q Are you aware of any further communications

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1 from people in the Washington office of RTC to people
2 in the Kansas City field office on the subject of
3 Madison between this initial request for information
4 that went out following the Gerth article and at the
5 end of the summer of 1992 when the first referral was
6 actually made to the Department of Justice?

7 A Can I ask you to repeat that.

8 Q You have testified that some point soon
9 after the Gerth article appeared -- and I can tell
10 you it's in the record. The Gerth article was
11 published on March 8, 1992. You've testified that
12 sometime shortly after that date, one or more people,
1 high officials in RTC Washington sent a request or
2 made a request to officials in the Kansas City field
3 office for information about the Madison failure.

4 My question is, are you aware of any
5 additional communications going from the Washington
6 RTC main office out to Kansas City on the subject of
7 Madison between that initial communication and the
8 time that the referral was made around Labor Day
9 1992?

10 A I don't recall any. Right now I'm not

1 aware of any. There may well have been
2 communications. The communication I recall seeing at
3 some point in time became an E-mail, and that E-mail
4 may have been circulated to other people. I just
5 don't recall any at this point.

6 Q Were you aware of any discussions or
7 concerns held by people in the Washington office as
8 to whether it was appropriate to be putting limited
9 investigative resources on a case that potentially
10 involved a presidential candidate during a
11 presidential campaign?

12 A There was clearly a concern about the
13 timing of that criminal referral, but in terms of
14 actually assigning resources to develop the criminal
15 referral, I'm not aware of anyone who -- I'm
16 certainly not aware of any concerns that were
17 expressed to me that told me we ought or ought not to
18 be putting particular resources on that matter at
19 that point in time.

20 Q Did you learn of anyone who seemed to think
21 that the RTC should be putting limited investigative
22 resources on this case, at least in part, because it

1 the case potentially involved someone who was a
2 leading presidential candidate?

3 A No one expressed any of those concerns to
4 me during that period of time that I can recall.

5 Q Did you hear any conversations anywhere
6 within the RTC between March and September of 1992
7 regarding the fact that Governor Clinton was
8 potentially involved in whatever investigation was
9 going on regarding the Madison case?

10 A I don't recall that there was a lot of
11 attention given that issue in Washington prior to the
12 referral, the date of the referral.

13 Q I don't think that was my question. My
14 question was, between March and September of 1992,
15 were you aware of any discussions, conversations
16 anywhere within the RTC regarding the fact that one
17 person possibly involved in the Madison investigation
18 was a leading candidate for the presidency?

19 A I'm aware of discussions that occurred
20 after the criminal referral became known, after the
21 time the referral was made or right about the time
22 that the referral was being distributed. If your

1 question is prior to that time, during the
2 investigation, I don't recall any.

3 Q Were you aware at the time that these
4 senior officials in Washington made the request out
5 to Kansas City for information about the case in
6 March 1992, or is that something that you've come to
7 know later?

8 A I viewed that as a normal inquiry that
9 would occur any time any type of high profile
10 information appeared in a major newspaper that
11 related to one of the institutions that we had
12 responsibility for.

13 Normally, someone would be asking senior
14 officials in the RTC about that particular incident
15 or matter. And it was the natural thing for those of
16 us in the agency to try to find out whatever we could
17 what we knew about that and make sure that senior
18 officials had available to them the information that
19 we had, that somewhere in the organization we had, so
20 they could be in a position to respond to whatever
21 questions they might get.

22 To me, the scenario of the inquiries going

1 out to the field, purely that's what that was all
2 about.

3 Q Did you know about that inquiry at the
4 time?

5 A I knew that there was an inquiry made from
6 my office much along the same lines, and I'm sure
7 that I learned very shortly, if not almost
8 immediately, that there were also -- there was also
9 an inquiry of that type coming down through the
10 regional director. I mean, it's a standard thing
11 that occurred quite frequently in those days. Any
12 time something like that came up, we'd try to find
13 information and bring it back up to prepare senior
14 officials for whatever kinds of questions might
15 come.

16 (Recess.)

17 BY MR. KRAVITZ:

18 Q Are you familiar with an RTC official named
19 Virginia Lewis-Kingsley?

20 A My understanding is she was the director of
21 the Tulsa office. I'm not personally acquainted with
22 her.

1 Q She was the director of the Tulsa office as
2 of when?

3 A I believe from the beginning until its --
4 I'm not certain of that, but at some point in time.
5 The Tulsa office closed in '92. She was there for
6 some or all of the period of time in the Tulsa
7 office.

8 Q Do you know whether Virginia Lewis-Kingsley
9 had any involvement in the decision to advance the
10 criminal investigation into the Madison case in 1992?

11 A I don't know.

12 Q Do you have any information to indicate
13 that political motivations played any role in the
14 decision to advance the criminal investigation into
15 the Madison case in 1992?

16 A I have no reason to believe that there were
17 any political motivations involved nor have I read
18 anything or learned anything since then that would
19 lead me to believe that was the case.

20 Q You received a copy of the 1992 referral in
21 the Madison case on the day that it went to the U.S.
22 Attorney's office and the FBI; is that correct?

1 A I believe that's correct, yes.

2 Q And the purpose in your receiving a copy of
3 the referral at that time was what?

4 A We knew it was a sensitive referral. The
5 vice president, Jim Thompson, and I had discussed it,
6 and Mr. Roelle was aware of it. For that reason, the
7 copy was overnighted directly to me at the same time,
8 I believe, it was probably overnighted to the U.S.
9 Attorney, or delivered. I don't know how it was
10 delivered.

11 Q You said that Mr. Roelle knew about the
12 referral before the referral actually was submitted.

13 A That's right.

14 Q How do you know Mr. Roelle knew about the
15 referral in advance?

16 A We had a discussion, Mr. Thompson and I.
17 At some point I recall discussing it with Mr. Roelle
18 and I don't remember exactly what the timing was, but
19 it was very close to the time when the referral was
20 completed and sent. And I recall that his
21 instructions were handle it in the normal course of
22 business the same way you would any other referral.

1 And that was done, and then a copy was delivered to
2 me, and I passed the copy on to Mr. Roelle.

3 Q How much substantive information about the
4 referral that was about to be submitted did you give
5 to Mr. Roelle before the time that the referral was
6 actually submitted?

7 A I don't recall giving him a lot of
8 substantive information. I didn't have a lot of
9 substantive information myself. I knew some of the
10 names of the people and some of the circumstances
11 that made this particular referral rather sensitive.
12 But beyond that -- and I would have passed that on to
13 Mr. Roelle, but beyond that, I wouldn't have known
14 much of the substance.

15 Q Did you tell Mr. Roelle beyond September 2,
16 1992 that Governor Clinton, that his name was
17 expected to be in the referral?

18 A I believe I did or Mr. Thompson did, but my
19 recollection is very vague on that.

20 Q Vague on which one of you told him or on
21 whether Mr. Roelle was told by someone?

22 A Mr. Roelle was told by someone. It was

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1 probably me. I just don't recall specifically.

2 Q What other names did Mr. Roelle know as
3 being likely to be included in the referral before
4 the referral was actually made?

5 A The McDougals certainly. I don't recall
6 anybody beyond that.

7 Q Do you know whether Mr. Roelle told anyone
8 else about the referral before the referral was made?

9 A I don't know.

10 Q What about after the referral was received
11 on September 2, 1992? You testified that after that,
12 you gave Mr. Roelle a copy of the referral?

13 A That's correct.

14 Q Was it on that day, September 2?

15 A It was the day that I received it, and I'm
16 not certain exactly when that was, but it was very
17 close.

18 Q Whatever the day was that you received the
19 referral, you gave it to Mr. Roelle?

20 A That's correct.

21 Q Did you ever discuss C0004 with Mr. Roelle
22 again between that day and the presidential election

1 on November 3, 1992?

2 A I don't recall any -- I don't recall any
3 discussions with him during that period, although I
4 may have had.

5 Q Do you know whether Mr. Roelle briefed
6 anyone else in the RTC hierarchy about the referral
7 following his receipt of it in early September 1992?

8 A I don't have any personal knowledge that he
9 did.

10 Q Have you heard that he did?

11 A I assume that he did, and I believe he may
12 have testified that he has -- that he did, but I have
13 no personal knowledge.

14 Q You've never discussed with Mr. Roelle
15 whether he talked to anyone else about the referral?

16 A No.

17 Q And just so the record is clear, you're
18 referring to Mr. Roelle's testimony that he talked to
19 Mr. Casey about it?

20 A That's correct.

21 Q Did you have any conversations with Albert
22 Casey about the criminal referral in the Madison case

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1 following its submission on September 2, 1992?

2 A No.

3 Q Was there anyone other than Mr. Roelle
4 above you in the RTC hierarchy who also reached out
5 to learn about the RTC referral in the Madison case
6 after its submission on September 2, to your
7 knowledge?

8 MR. BRENNER: I'm sorry, could you read
9 back the question.

10 MR. KRAVITZ: Let me just rephrase it.

11 BY MR. KRAVITZ:

12 Q You've already testified about how
13 Mr. Roelle received a copy of the criminal referral
14 from you on the day you received it in early
15 September 1992.

16 Was there anyone else in the RTC hierarchy
17 at your level or higher who sought information about
18 the criminal referral after its submission on
19 September 2, 1992?

20 MR. BRENNER: Well, I guess my question
21 related to "sought." This was sent to him. I don't
22 know that we've clearly established that either

1 Mr. Roelle or Mr. Dudine had sought the information,
2 but rather, had received it.

3 BY MR. KRAVITZ:

4 Q That's fine. My question was, did anyone
5 seek it?

6 A I don't recall anyone who sought it.

7 Q Did you give the referral to anyone other
8 than Mr. Roelle?

9 A During that period of time, no.

10 Q During which period?

11 A I mean the period immediately after that, I
12 did not. It wasn't until all these investigations
13 began that the referral was included with the '93
14 referrals and got into various places.

15 Q During the period, September 2, 1992
16 through November 3, 1992, Mr. Roelle is the only
17 person you gave a copy of the criminal referral to?

18 A That's correct.

19 Q Is there anyone else at RTC Washington you
20 discussed the referral or the issues mentioned in the
21 referral with other than Mr. Roelle during that time
22 period?

1 A To the best of my recollection, and
2 although I may have discussed it with others, I
3 recall having some discussions with Peter Knight, who
4 was our director of government relations, mainly in
5 the context of the referral being out there and the
6 election coming along and concerns we had about
7 something becoming public, but that's about all that
8 I recall during that period of time.

9 Q You testified previously that you attended
10 an RTC conference in January 1993 in Washington,
11 D.C.; is that correct?

12 A I was there for a brief period of time. I
13 didn't attend the entire conference.

14 Q Was this the national criminal coordinators
15 conference on January 15, 1993 in Washington, D.C.?

16 A I believe that was it.

17 Q I'm reading off of this document. I'm
18 showing you a multiple page document beginning on
19 Bates number CG 0028 going through CG 0034. Take a
20 look at that and see if that refreshes your memory as
21 to the name of the conference and the date.

22 A Yes, that's the conference. I gave some

1 introductory remarks on the first morning. I don't
2 recall that I went back, but I know I was there
3 during the first morning.

4 Q What was the purpose of this conference as
5 you understood it?

6 A Well, the purpose had -- generally, it was
7 considered a training conference and a conference --
8 this may have been the first time where we had a
9 conference that included both legal criminal
10 coordinators and investigative criminal
11 coordinators. We brought them together, and one of
12 the purposes was to promote cooperation in the field
13 offices.

14 Q Cooperation between legal and --

15 A Between legal and investigations, and
16 again, begin to standardize some of our procedures.

17 Q Was there a perceived need to increase the
18 cooperation in the field offices between the legal
19 division employees and investigators?

20 A I certainly perceived that need. I suspect
21 others did as well.

22 Q What was the basis for your perception that

1 improved cooperation was needed?

2 A My recollection is that we had some
3 differences -- I don't want to call them differences
4 of opinion -- but we had operating procedures in
5 place in some offices where investigations was
6 operating sort of independently of the legal
7 division, and they were all handling their respective
8 areas without working together toward a common
9 objective.

10 For example, in preparing criminal
11 referrals, generally, that was the role of the
12 investigator, to prepare and distribute a criminal
13 referral. However, once the referral was received by
14 the Justice Department, and they subpoenaed
15 additional records, the legal division would step in
16 and work with the Justice Department with the
17 subpoena. And the two sides really never got
18 together, and it caused some problems.

19 I viewed it as mainly a turf issue and felt
20 that we needed to work on that so that the legal
21 coordinator and the investigator work together prior
22 to sending the referral over, so we all appeared to

1 be on the same team when the Justice Department came
2 back to us for additional information.

3 Q Was the entire conference on January 14th
4 and 15th, 1993 focused on improving and increasing
5 the level of cooperation between investigators and
6 legal division officials at the various field
7 offices?

8 A No. Again, we viewed it as a training
9 conference. I think a good deal of the time was
10 spent on criminal restitution issues, how to make
11 sure that we got the word out to the sentencing court
12 that our institution, the RTC, had suffered damages
13 in the context of a criminal case so we could get an
14 award of restitution, and then in working to actually
15 collect restitution orders that were awarded to the
16 RTC.

17 Q Wasn't the question of restitution in
18 criminal cases really also a question of improving
19 the cooperation between lawyers and investigators and
20 ensuring that information that the investigators had
21 made it to the court through the lawyers?

22 A That's right.

1 Q And so the restitution issue -- the
2 training on the issues of restitution, really, was
3 part of the overall concept of increasing and
4 improving the level of cooperation between lawyers
5 and investigators; correct?

6 A I think that's fair. I mean, all of these
7 issues demanded input from both investigators and
8 lawyers. And to the extent they worked together, we
9 were all a lot better off.

10 Q And failures in communication between
11 investigators and lawyers actually had resulted in
12 problems in the RTC's ability to obtain restitution
13 orders in criminal cases?

14 A That's probably fair to say, although I
15 don't know of any specifics, but I'm sure that did
16 occur.

17 Q Do you know whether Jean Lewis was at the
18 conference in D.C. on January 14th and 15th, 1993?

19 A I really don't know that she was there. I
20 believe she was there, and this may contain a roster.

21 Q Let me start by asking it this way: Do you
22 remember seeing Ms. Lewis at the conference, the

1 national criminal coordinators conference January
2 14th and 15th, 1993?

3 A I had no specific recollection that she was
4 there. I believe she would have been there.

5 Q You do believe that she would have been
6 there?

7 A Yes.

8 Q Let me show you two pages of this document
9 and see if they refresh your recollection. The first
10 page, CG 0032, which is part of the schedule for day
11 1, January 14, 1993, indicates that from 4:15 p.m. to
12 5:30 p.m., Ms. Lewis was on a panel -- an open
13 discussion panel described as a discussion of
14 techniques used to implement the RTC criminal
15 coordinator program. Do you see that?

16 A Yes.

17 Q And also on page CG 0034, where her name is
18 listed as an attendee in RTC investigations and what
19 appears to be someone's signature, at least, next to
20 her name, do those entries refresh your memory as to
21 whether Ms. Lewis was at the conference?

22 A Again, I don't recall her being at the

1 conference, but that would indicate that she was
2 there.

3 Q To your knowledge, were there discussions
4 at this conference on January 14th and 15th, 1993
5 regarding legal reviews of criminal referrals before
6 the submission of those criminal referrals to the
7 Department of Justice?

8 A I recall there was a discussion during the
9 morning session that I attended where we discussed
10 that particular issue, and I believe on that panel
11 was Tom Hinds and myself and Carl Campbell was
12 there, I know, during this discussion. And I
13 certainly left with the view that the attendees --
14 that the attendees should have understood that we
15 meant that instruction to be a prior review or a
16 consultation to improve cooperation and coordination
17 between the legal division and the investigators.

18 Q Can you show us on this schedule which part
19 of the program you're referring to?

20 A My recollection is that it occurred
21 sometime in this period, unless it was scheduled
22 sometime later on, and I just don't recall having

1 gone back. One of the objectives of the conference,
2 as I recall, was to develop that directive, and I
3 think we discussed that on that first morning.

4 Q The directive that there be legal input
5 into the drafting of criminal referrals?

6 A Right.

7 Q And your recollection is that this was
8 discussed in front of all of the attendees, or at
9 least everyone who was present at the conference,
10 early in the morning of the first day of the
11 conference?

12 A That's my recollection.

13 Q Is it your memory that this was a
14 conference at which there was just one thing going on
15 at a time as opposed to conferences where there's
16 things going on in several different rooms?

17 A That's my recollection, yes.

18 Q So if Ms. Lewis was attending the
19 conference and was actually at a session on the first
20 morning of this conference, she would have been at
21 the session at which this was discussed?

22 A That's correct.

1 Q And it's your understanding that input of
2 legal staff in the drafting or review of criminal
3 referrals prior to their submission was something
4 that was to be done in the field offices following
5 this conference, January 14th and 15th, 1993?

6 MR. BRENNER: I'm sorry, drafting and
7 review are two separate things.

8 MR. KRAVITZ: I understand that.

9 MR. BRENNER: Which are you referring to?

10 MR. KRAVITZ: I'm referring to both.

11 THE WITNESS: In my understanding, and my
12 recollection of the discussion was that we were --
13 this was a monumental change for some people in the
14 organization, people who had been working on these
15 things for four years or so and who felt very
16 strongly, again, for turf reasons, I believe.

17 Nevertheless, preparing criminal referrals
18 was the purview of the investigations department. So
19 I believe the gist of our discussion was that we
20 don't want this to be a total change in how we
21 operate. What we want to achieve here is merely the
22 fact that somebody from the legal division gets an

1 opportunity to look at these referrals before they're
2 sent to the Department of Justice.

3 I don't think we discussed at all whether
4 or not the legal division should have any input in
5 drafting. However, ideally, at least in my view, we
6 would probably achieve a better product if, in fact,
7 lawyers and investigators worked together in the
8 early stages of the criminal referrals.

9 I had no anticipation we would make that
10 leap as a result of this conference. I would have
11 been satisfied if we would at least establish the
12 fact that the legal criminal coordinator would be in
13 a position to review it before it went over.

14 Q And that was an approach that was to go
15 into effect immediately upon completion of this
16 conference, January 14th and 15th, 1993, that the
17 legal criminal coordinator would be given an
18 opportunity to review a referral before its
19 submission to the Department of Justice?

20 A Again, it was my expectation that the
21 attendees would go back, and I think there was even a
22 statement made probably by me or others that here's

1 what we want. When you get back to your offices,
2 work out among yourselves a procedure that will
3 achieve this objective. And my expectation was that
4 they would begin working on that immediately, and I
5 assumed -- I really actually hoped that the directive
6 would be signed and put in effect shortly
7 thereafter. It obviously took a little bit longer to
8 get it signed.

9 Q In other words, at the conference in the
10 middle of January 1993, you and others at the top of
11 the RTC did not tell people from the field offices
12 exactly how it was that they were to achieve legal
13 input into the referrals or legal review of the
14 referrals, but it was made clear that there was to be
15 some legal input in the review of referrals before
16 the submission of those referrals to the Department
17 of Justice; is that correct?

18 A At least in my mind, that was the message.
19 Now, I understand that this was a conference of the
20 criminal coordinators and not the managers in the
21 field, and in the field, managers may not implement a
22 new procedure such as this until they actually got a

1 formal directive.

2 MR. BRENNER: Can we go off the record for
3 a second?

4 (Recess.)

5 BY MR. KRAVITZ:

6 Q Mr. Dudine, I've handed you a copy of a
7 June 17, 1993 memorandum from you, Thomas Hindes,
8 James Barker and Jerry Patchan "to all RTC
9 investigations department heads, all investigations
10 staff, all assistant general counsel, all litigation
11 professional liability and complex litigation section
12 chiefs and all litigation professional liability and
13 complex litigation attorneys, subject: criminal
14 referrals."

15 Is this the policy directive that you
16 testified about previously?

17 A That's correct.

18 Q What do you know about whether criminal
19 referrals were reviewed by legal division officials
20 in the various field offices between the mid-January
21 1993 conference you just testified about and the
22 publication of the June 17, 1993 policy directive?

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1 A How did the various field offices handle
2 that after the conference in that time period?

3 Q Right.

4 A I don't know.

5 Q So it's fair to say, then, you don't know
6 whether the Kansas City office had any legal division
7 review of any criminal referrals that were submitted
8 to the Department of Justice during this five-month
9 time period between January and June 1993?

10 A That's correct.

11 Q You don't know one way or the other?

12 A I don't know one way or the other.

13 Q Do you know whether the Kansas City field
14 office submitted any criminal referrals during that
15 five-month period in early 1993?

16 A I don't know that either.

17 Q Going back to January 1993, what was -- why
18 was it that you thought that there needed to be legal
19 review of criminal referrals prior to the referral
20 submission to the Department of Justice?

21 A Well, again, as I think I stated before,
22 one of my main objectives was to promote cooperation

1 wherever possible between investigations and
2 lawyers.

3 And also, I know from my own earlier
4 experience within the RTC, that in most cases, the
5 product is improved when you have a lawyer take a
6 look at it and there is some sort of a cooperative
7 spirit in terms of putting together a better
8 product.

9 That, as well as we wanted to make sure
10 that good coordination occurred between the legal
11 division and the investigative units so that we
12 didn't have criminal cases going off one way that
13 someone working on a civil case didn't know anything
14 about.

15 Q Had there been complaints from officials of
16 the Justice Department or elsewhere about the quality
17 of RTC criminal referrals as of the time that this
18 conference was held in early 1993 or at the time that
19 the policy directive was issued in June 1993?

20 A I'm really not aware of any complaints
21 about the quality of referrals. The feedback that I
22 had been getting was generally that the Justice

1 Department was pleased with the referrals. Every now
2 and then, someone would complain about not getting
3 referrals at all or not getting enough referrals or
4 not getting referrals quickly enough, but I'm not
5 aware of anything related to the quality of
6 referrals.

7 Q What was the purpose of issuing the June
8 17, 1993 policy directive on criminal referrals?

9 MR. ENDLER: Other than what he's already
10 testified to?

11 BY MR. KRAVITZ:

12 Q Let me put it to you. What was the purpose
13 of putting it in writing, in light of the fact that
14 there had already been this conference on the
15 subject?

16 A As you can see by the number of individuals
17 that signed this, we wanted to make sure that we had
18 a formal policy from Washington that included
19 everybody that worked for the agency. So many of
20 these litigation lawyers didn't necessarily work in
21 the general area where criminal referrals would be
22 developed. Yet this policy statement made it clear

1 that everybody in the agency was covered by a
2 directive to prepare and make criminal referrals any
3 time that criminal violations were discovered.

4 Q Was the June 17, 1993 policy directive
5 effective immediately?

6 MR. BRENNER: I believe I already asked
7 that.

8 THE WITNESS: It's my understanding that it
9 was, yes.

10 BY MR. KRAVITZ:

11 Q And were the directives -- were the orders
12 included in this directive mandatory?

13 A I mean, if you're referring to the review
14 by legal, I believe it says "except in rare cases,"
15 so that leaves some latitude for exceptional
16 situations. But with that qualification, I would say
17 we expected this directive to be followed.

18 Q Just so the record is accurate, why don't
19 you read into the record that sentence that you were
20 just referring to on page 2 of this directive.

21 A "Except in rare circumstances, criminal
22 referrals shall be reviewed by RTC investigations and

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1 legal division criminal coordinators (RTC criminal
2 coordinators) before they are delivered to the U.S.
3 Attorney and the FBI or other investigative agency."

4 Q Now, what was contemplated as the rare
5 circumstances that could produce an exception to that
6 rule?

7 A I have no knowledge of the rare
8 circumstances. I mean, I'd be speculating. I didn't
9 draft the document, but I suspect that it's in there
10 merely to cover a situation that clearly everybody --
11 that may come up, may arise, where everyone involved
12 would be in agreement that the referral needed to be
13 made quickly and for some reason, the prior review
14 couldn't be accomplished. I don't think there's
15 anything specific --

16 Q In other words, there's nothing specific
17 that was contemplated as a rare circumstance to avoid
18 the need of a legal review?

19 A To my understanding, no.

20 Q Do you know who drafted the June 17, 1993
21 policy directive?

22 A I'm not certain. I believe a lawyer that

1 works for Carl Gamble, Tracy Whitaker, I believe,
2 drafted it, but I'm not certain of that.

3 Q Also on page 2 of this document, paragraph
4 3, which is entitled "Handling of criminal
5 referrals," the directive states "all referrals are
6 sensitive and must be handled with appropriate
7 confidentiality and care."

8 What was the perceived need to include that
9 information or that statement in this directive?

10 A Again, I did not compose that language. I
11 can offer my views on why it might be there.

12 Q You signed this; is that correct?

13 A Right.

14 Q Did you review it before you signed it?

15 A I did.

16 Q Did you discuss this memorandum with any of
17 the other signatories to the memorandum?

18 A We didn't discuss the confidentiality
19 aspect of it. I suspect that since the directive was
20 intended to apply to maybe outside counsel, other
21 contractors who may come into possession of criminal
22 referrals, that it was important to reiterate the

1 confidentiality aspects of it, but certainly, those
2 who worked in this area were well aware that criminal
3 referrals should be held confidential.

4 Q Did you ever become aware after June 17,
5 1993 as to whether the June 17, 1993 policy directive
6 was being followed in the Kansas City field office of
7 the RTC?

8 A Well, I became aware of the difference of
9 opinion, for lack of a better term, at the time the
10 nine criminal referrals were being prepared. Prior
11 to that, I don't recall that I became aware of
12 anything else.

13 Q So in other words, in late September 1993,
14 you became aware that there were some problems in the
15 implementation of the June 17 policy directive in the
16 Kansas City office?

17 A That's right.

18 Q What problems did you become aware of at
19 that time?

20 A It came to my attention that nine criminal
21 referrals had been prepared, and the investigative
22 unit in the Kansas City office were prepared to send

1 them to the Department of Justice. At some point in
2 that process, it came to my attention that a legal
3 review had not been conducted or there was some
4 misunderstanding about how that legal review was to
5 be conducted.

6 Q What was the misunderstanding, as you came
7 to know about it?

8 A The misunderstanding was, I believe, in how
9 the policy directive should be read and implemented.
10 Again, I think I testified earlier I'm still not
11 exactly clear as to whether or not the investigators
12 in Kansas City believed that no legal review was
13 necessary, or whether they believed -- whether it had
14 to do with the actual depth of the review.

15 Nevertheless, there was a difference of
16 opinion that was essentially holding up the process
17 of distributing referrals that others in the agency
18 had already been notified that were going to be
19 delivered to the Justice Department in short order,
20 and I believe the fact the Justice Department had
21 been notified that they were on the way. We were
22 essentially in a period of time where time was

1 important.

2 Q How was the difference in opinion resolved?

3 A The legal review was conducted.

4 Q Who directed that a legal review actually
5 be conducted?

6 A During that period, Carl Gamble and I had
7 discussed with the investigators in the Kansas City
8 office the need for applying a policy and getting the
9 criminal -- getting the legal review accomplished.

10 But during that conversation, we also
11 discussed what our views were of how that review
12 should be conducted and that it was a consultation
13 and not really an approval process. We also
14 suggested that it might be in everyone's interest to
15 try and get this review conducted quickly and get the
16 referrals distributed to the Justice Department.

17 Essentially, the decision on how that
18 interaction should take place was left to the people
19 in Kansas City to accomplish the review and get the
20 referrals turned over to the Justice Department.

21 Q Was there any resistance among RTC
22 investigators in Kansas City to the idea of a legal

1 review?

2 A Well, there was clearly some tension.

3 Q Which investigators were you dealing with,
4 by the way?

5 A We spoke to Mr. Iorio, Mr. Ausen, Jean
6 Lewis, perhaps someone else at that time. I recall
7 those three people particularly. And they were
8 resistant to -- again, I hesitate to say that to
9 permit a legal review to be done, I don't know
10 exactly if that was the resistance or how the legal
11 review was intended to be conducted by the criminal
12 coordinator in Kansas City.

13 Q Tell us what you remember any of those
14 investigators from Kansas City saying during these
15 conversations about their concerns?

16 A I remember -- I recall from our
17 conversation with them that they felt that the
18 information in the referral as it appeared in their
19 original draft should go unfettered, as it was
20 prepared to go to the Department of Justice. And I
21 don't know whether it was stated during the
22 conversation, but it certainly appeared to me that

1 they believed the legal people wanted to edit some of
2 the information in the referrals before sending it
3 on.

4 Q What was the response of the investigators
5 when you told them that what you contemplated
6 happening was the lawyers simply reviewing but not
7 dictating to the investigators what the final product
8 would be?

9 A Well, Mr. Iorio indicated that they would
10 get that accomplished, and they would try to get it
11 accomplished in as short a period of time as
12 possible, and that the referrals would be sent to the
13 Justice Department as soon as they could get that
14 accomplished, and that was pretty much the end of
15 that conversation.

16 Q Did any of the investigators in the Kansas
17 City office during these conversations in late
18 September 1993 express any surprise that the June 17,
19 1993 policy directive was in effect?

20 A I know in my discussions with Mr. Iorio
21 that he seemed to believe that the policy didn't
22 quite mean exactly what I thought it meant. He also

1 seemed to refer on occasion to a September document
2 that apparently was a draft expansion of the policy
3 that was never put into place.

4 But I can't honestly say I truly understand
5 how Mr. Iorio viewed the implication of the policy.
6 In my conversation with him, I merely -- Mr. Gamble
7 and I merely said look, this is the policy. We have
8 to get the legal review done.

9 Q What did Mr. Iorio say in late September
10 1993 that indicated to you that he had a different
11 interpretation than you did of what the June 17, 1993
12 policy directive meant?

13 A It seemed to me that Mr. Iorio thought that
14 the policy meant something other than just a review
15 and consultation.

16 Q In other words, he thought that it meant
17 more than that?

18 A More like an approval.

19 Q And just so the record --

20 A Or at least he was -- my impression from
21 what Mr. Iorio was telling me was that someone on the
22 legal side in Kansas City was telling him that the

1 policy meant something more than what I thought it
2 meant.

3 Q And what was the September -- the draft of
4 the September document that Mr. Iorio referred to?

5 A There was apparently a draft document in
6 September that was never signed. It was circulated
7 and it was, according to Mr. Iorio, was being held
8 out in the Kansas City office as an official policy,
9 and I'm not that familiar with it, although I believe
10 it may have gone into a little bit more depth about
11 the legal review. It was not an official policy. It
12 was never issued.

13 MR. BRENNER: If we can go off the record,
14 let me check on the room.

15 (Discussion off the record.)

16 (Recess.)

17 BY MR. KRAVITZ:

18 Q Before we broke, we were talking about
19 conversations that you and others in Washington had
20 with investigators in the Kansas City office in late
21 September 1993 regarding the scope of any legal
22 review that might occur of the nine criminal

1 referrals that had been drafted by investigators in
2 the Kansas City office. And you've testified about
3 comments that Mr. Iorio made during these
4 conversations that you had.

5 Did Ms. Lewis say anything during any of
6 these conversations about her interpretation or
7 understanding of the legal review contemplated by the
8 June 17, 1993 policy directive?

9 A I don't recall discussing that with her.
10 Those discussions were with Mr. Iorio.

11 Q Was anyone else on the telephone with
12 Mr. Iorio?

13 A We had a couple of discussions about the
14 legal review. I believe some discussion occurred
15 during the conference call when Ms. Lewis was
16 present, but I don't recall that we went into the
17 application of the policy so much during that
18 conversation.

19 Q Did you have any conversations during the
20 time period, late September 1993 with any members of
21 the legal division in the Kansas City field office
22 about the scope of any legal review of these

1 referrals?

2 A I don't recall any conversations. I have
3 seen an E-mail from Julie Yanda indicating there was
4 a conversation between she and I. I really don't
5 recall that conversation. What I recall is that Carl
6 Gamble was communicating to the lawyers. I was
7 communicating with Iorio. Carl and I were then
8 communicating together in Washington, and that's
9 generally the way that communication occurred.

10 Q Is the legal review that ultimately was
11 conducted on these nine criminal referrals in the
12 fall of 1993 the type of legal review that was
13 contemplated by the June 17, 1993 policy directive?

14 A In my view, no. Again, talking ideally,
15 there would be more of a little bit more deliberation
16 between the lawyers and the investigators prior to
17 actually preparing the referrals, realizing that
18 we're probably not dealing in ideals here. I would
19 expect it's some type of a verbal review where
20 suggestions might have been made one way or the
21 other. Those suggestions are hopefully incorporated
22 or rejected for whatever reason, for good reason, but

1 not a review that culminated in a separate document.

2 Q But I believe you said -- so I guess just
3 to summarize, in your opinion, the legal review was
4 not ideal for a couple of reasons. One, you thought
5 that the review ordinarily would have been oral
6 rather than written. And two, you wished that there
7 had been more collaboration between the investigators
8 and the lawyers in terms of the final product?

9 A I'm speaking generally on how that review
10 ought to take place, in my view.

11 Q What's your understanding as to how much
12 consideration the investigators gave to the legal
13 review before the investigators sent the referrals on
14 to the Department of Justice in September 1993?

15 A I believe that the referrals were sent
16 without any changes made as a result of the review.

17 Q To your knowledge, were the referrals sent
18 to the Department of Justice the same day that the
19 legal review was provided to the investigators?

20 A I'm not certain exactly of the time frame,
21 but it was close. It may have been the same day.

22 Q Do you know whether there was a meeting or

1 any discussion of the suggestions contained in the
2 legal review between the lawyers and the
3 investigators before the referrals were actually sent
4 to the Department of Justice?

5 A I can't say that I know specifically that
6 that occurred.

7 Q But that's something that you certainly
8 would have -- you contemplated occurring as a result
9 of the June 1993 policy directive?

10 A That's correct.

11 Q Now, you testified earlier that in late
12 October of 1992 -- and I'm sorry to jump around, but
13 to go back almost a year now, late October 1992 --
14 you learned that agents at FBI headquarters here in
15 Washington had reviewed the first criminal referral
16 in the Madison case, C0004.

17 What did you learn about the review that
18 FBI agents at headquarters had conducted?

19 A I learned very little, other than obviously
20 they had looked at the referral. The contact took
21 place at FBI headquarters. And we had generally, as
22 I recall, a get-acquainted meeting with some new

1 people who had come into the FBI and a comment on the
2 way out or someone said something like we've looked
3 at that referral, and that was about the end of it.

4 Q Did the meeting that you attended at FBI
5 headquarters have anything to do with Madison?

6 A Not at all.

7 Q This was just a side comment?

8 A That's right.

9 Q Do you remember who made the comment?

10 A I don't remember who made the comment. I
11 believe Ron Dick was at the meeting.

12 Q Who's he?

13 A At the time he was the chief of financial
14 crimes, white collar crime.

15 Q In the FBI?

16 A Yes.

17 Q Did Mr. Dick say anything to you about any
18 teletypes that the FBI headquarters had received from
19 FBI Little Rock field office relating to the 1992
20 criminal referral?

21 A No. The only comment was very simply we've
22 looked at or we've seen the Madison referral, and it

1 was like on the way out, and I didn't follow up on
2 it. I assumed if they wanted to talk about it, that
3 something would be set up later on. It never was.

4 Q Do you have any information as to how it
5 came to be that FBI headquarters was looking at --
6 agents at FBI headquarters were looking at the 1992
7 referral in October 1992?

8 A No.

9 Q Do you have any knowledge of Justice
10 Department involvement -- and when I say "Justice
11 Department," I mean main Justice Department -- in
12 handling criminal referrals in the late fall of 1992?

13 A At the time I had no knowledge of whether
14 or not main Justice was handling those referrals.
15 Well, subsequently in listening to testimony and
16 reviewing things, I've become aware that, in fact,
17 the referral sort of spent some time in Washington.

18 Q You testified earlier that you were not
19 surprised when you learned that the 1992 criminal
20 referral was declined the next year by the United
21 States Attorney's office in Little Rock. Why was it
22 you were not surprised when you learned that referral

1 C0004 was declined?

2 A Well, most referrals are declined
3 ultimately. This particular referral obviously
4 involved some people who had already been tried and
5 acquitted for similar transactions, violations. I
6 was not surprised.

7 Q So although you believed that C0004 met the
8 RTC's standards for making a criminal referral, you
9 recognized that there were weaknesses in the referral
10 in terms of its attractiveness to prosecutors?

11 A Well, I wouldn't say that. Weaknesses in
12 the referrals sometimes can be strengths to the
13 Justice Department. The referral contains
14 information that certainly may be a piece of a
15 puzzle, but one that the Justice Department gets a
16 look at, and it makes perfect sense and it was
17 exactly the piece that was missing.

18 Q You recognized there were legitimate
19 issues -- or there were issues raised by the 1992
20 referral that could provide legitimate reasons for
21 the referrals declination by the United States
22 Attorney's office as you've already mentioned?

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1 A When put together with whatever additional
2 information they had, sure.

3 Q Just to go back to one point that you were
4 testifying about a minute ago, I believe you
5 testified this morning that as of October 1993, you
6 had never seen a written legal review in another
7 matter regarding another criminal referral; is that
8 correct -- let me rephrase the question.

9 I believe you testified that the written
10 legal review that you saw in October 1993 coming out
11 of the PLS in Kansas City was the first legal review
12 that was written that came to your attention; is that
13 correct?

14 A To the best of my recollection, that's
15 true, but normally, I don't review closed matters.

16 Q So you're not testifying that you know that
17 that is the only legal review that's ever been put in
18 writing?

19 A No.

20 Q And to your knowledge, is there any rule
21 that prohibits making legal reviews written?

22 A No.

1 Q You were asked about an E-mail message --
2 this morning, you were asked about an E-mail message
3 that referred to certain investigators in the RTC's
4 Kansas City office being given three days off as a
5 result of their work in the Madison case. Do you
6 remember that E-mail that you were shown this
7 morning?

8 A Was I shown an E-mail? I remember the
9 discussion. I'm sorry. It's a long time ago.

10 MR. BRENNER: It was an E-mail.

11 THE WITNESS: Okay.

12 MR. BRENNER: The point that may jog your
13 memory on it is "this stinks."

14 THE WITNESS: Okay, if it was in that. The
15 part I remember from that E-mail was the commendation
16 letter.

17 BY MR. KRAVITZ:

18 Q It was all part of the "this stinks"
19 conversation. Were you involved in the decision to
20 give those Kansas City investigators three days off
21 as some kind of benefit or award for their past work?

22 A This was in 1993; right?

1 Q I believe so.

2 A No, I was not.

3 Q Now, you testified earlier about briefings
4 that you attended in early 1994 following the arrival
5 at the RTC of Jack Ryan and Ellen Kulka. And
6 specifically, you testified about briefings on the
7 Madison case, and I believe you testified that April
8 Breslaw was involved in some of these briefings; is
9 that correct?

10 A April Breslaw was involved in some meetings
11 in early 1994. I don't recall exactly which ones,
12 whether she was involved in the early meetings or
13 not.

14 Q But she was present at meetings on the
15 Madison case that also included you and Mr. Ryan
16 and/or Ms. Kulka?

17 A I recall -- the best of my recollection is
18 she attended some briefings when Ms. Kulka was
19 there. I'm not at all certain about whether or not
20 she attended the Ryan briefings. I would suspect
21 not.

22 Q To your knowledge, did either Mr. Ryan or

1 Ms. Kulka ever instruct Ms. Breslaw or anyone else,
2 for that matter, to pressure investigators in the
3 Kansas City field office to conclude that the
4 Whitewater Development Corporation had caused no loss
5 to Madison?

6 MR. BRENNER: I'm sorry, can you just read
7 back the question. I didn't hear the second part of
8 it.

9 (The reporter read the record as requested.)

10 THE WITNESS: Not to my knowledge, no.

11 BY MR. KRAVITZ:

12 Q You testified earlier that you thought that
13 Ms. Lewis, Mr. Ausen and Mr. Iorio did a good job
14 putting together facts in the Madison case, and that
15 you thought they did a good job up until the time
16 that you learned that Ms. Lewis had turned over
17 documents to Representative Leach in the spring of
18 1994.

19 How did your learning that Ms. Lewis had
20 turned over documents to Mr. Leach in the spring of
21 1994 affect your opinion of the job that Ms. Lewis
22 did in the Madison case?

1 A Clearly, I viewed that as an unauthorized
2 release of confidential information. I would have --
3 if Ms. Lewis had serious concerns about the way the
4 Madison matter was being handled, I believe she
5 should have made those concerns known within the
6 agency first. After that disclosure, I had to
7 question her other motives throughout the
8 investigation.

9 Q To your knowledge, had Ms. Lewis raised
10 concerns about the way the investigation was being
11 handled within the RTC before the time that she
12 provided those documents to Mr. Leach in the spring
13 of 1994 as you would have expected her to do?

14 A She did not raise anything directly to me,
15 that I recall.

16 Q Are you the person in Washington that
17 Ms. Lewis would normally have raised her concerns
18 with?

19 A Well, I would expect so. Clearly, I was
20 aware that there were some -- in March of '94, the
21 Agency Completion Act had come into play, and we had
22 a changeover in personnel. All of that had caused

1 quite a bit of -- a good deal of change throughout
2 the organization, and I believe it was probably
3 during that period that some people felt that things
4 were being handled differently, as to be expected,
5 they were. There were major changes in the
6 organization during that period of time.

7 Q What did Ms. Lewis's turning over these
8 documents to Mr. Leach make you think about what her
9 motivations might have been throughout the
10 investigation?

11 A Well, I had mixed feelings. While I felt
12 that -- I seriously felt that she would not and had
13 not leaked any information to the press in order to
14 get publicity for the case, the result, of course,
15 was the same when Mr. Leach released a lot of that
16 information.

17 From that point forward, it was impossible
18 to support the credibility of the investigative unit
19 in Kansas City with the hierarchy in Washington, who
20 I was now reporting to, Ms. Kulka and others.

21 Q What do you mean by that?

22 A I mean that clearly the credibility of the

1 Kansas City unit demonstrated as being something
2 other than an agency.

3 Q Did that go just for Ms. Lewis or for
4 Mr. Iorio and Mr. Ausen as well?

5 A I think it extended throughout the unit.

6 Q Did you ever discuss with Ms. Lewis why it
7 was that she gave documents to Representative Leach?

8 A No.

9 Q Did you ever discuss with anyone in the
10 Kansas City office why it was that those documents
11 were provided to Mr. Leach in an unauthorized way?

12 A I know I had speculated probably on
13 occasion about why she might do something like that,
14 but I don't recall any real substantive discussions
15 with anyone.

16 Q What were some of the speculations that you
17 made?

18 A Well, I believe that she felt that there
19 was some attempt -- and I believe she felt this way,
20 although I haven't seen her testimony -- that there
21 was some attempt by Washington, maybe the Washington
22 office, to delay or not to forward any of the

1 criminal investigation based on those referrals. She
2 felt maybe now it would be to provide -- as a whistle
3 blower kind of a thing to Congress, and in so doing,
4 she provided information to Mr. Leach.

5 Q Do you know of any effort by RTC Washington
6 to delay or otherwise interfere with the criminal
7 investigation in the Madison case?

8 A No.

9 Q Is it conceivable to you that any such
10 effort could have been made without your knowing
11 about it in light of your position?

12 A Is it conceivable? I suppose it's
13 conceivable.

14 Q How likely is it?

15 A Not likely.

16 Q Now, Ms. Lewis had been removed from the
17 Madison case back in November of 1993; is that
18 correct?

19 A I believe that's correct, yes.

20 Q And to your knowledge, was Ms. Lewis's
21 removal from the Madison case related in any way to
22 suspicions that she had been involved in leaking

1 information to the press before her removal?

2 A No.

3 Q Were you -- there had been leaks to the
4 press about the Madison case as of November 1993;
5 correct?

6 A Well, I recall the date as sometime in late
7 November -- I'm not exactly sure -- but I believe
8 there was a story in The Washington Post that came
9 out in the end of November. It may have been
10 November 30th, something like that.

11 Q But there had been press inquiries before
12 that time; right?

13 A That's right.

14 Q And wasn't it generally assumed, at least,
15 that the press inquiries themselves were the result
16 of at least general leaks from within the RTC?

17 A Some people may have assumed that.

18 Q Did you assume that?

19 A I tried to keep an open mind on that,
20 knowing that there were other people who had
21 information, for example, former Assistant U.S.
22 Attorneys who had worked on the first referral, lots

1 of people in the Justice Department. So there were a
2 population of people who could have leaked that
3 information earlier in the fall.

4 Q In other words, you believe someone had
5 leaked information earlier in the fall of 1993 about
6 the fact that new referrals were on their way. You
7 just didn't know whether the person or people who had
8 leaked that information were RTC people?

9 A About whether new referrals were on the
10 way, I'm not sure. But certainly about some of the
11 information that was the subject of those referrals.
12 And again, I don't recall seeing a story that
13 actually mentioned the new referrals until sometime
14 late in November.

15 Q Were you concerned as of November 1993 that
16 leaks were coming out of the RTC Kansas City field
17 office?

18 A We were concerned about the leaks.
19 Certainly other people in the agency were very
20 concerned and probably believed more than I that they
21 were coming out of the Kansas City office.

22 Q Who was that?

1 A Ms. Kulka, others in the legal division,
2 Mr. Hindes, Mr. Gavrellian.

3 Q Was anything done from Washington in
4 response to these leaks and the article that you've
5 referred to that came out in late November 1993?

6 A We had a meeting, I recall, with the
7 Inspector General or the Deputy Inspector General at
8 one point in early '94, I believe. It might have
9 been late '93. And Peter Knight and myself and I
10 think Ken Donohue from my office discussed the fact
11 that there were potentially some leaks and whether or
12 not it made any sense to try to conduct -- have the
13 Inspector General conduct an investigation. The
14 general view there was that probably it would not be
15 productive.

16 Q In terms of trying to determine who had
17 leaked the information?

18 A Right.

19 Q As a general matter, how do leaks affect
20 ongoing RTC investigations?

21 A Again, it can be very devastating,
22 certainly in a civil case.

1 Q How so?

2 A Because strategy, information about our
3 legal strategies, people that we're targeting, all
4 that stuff could be leaked to the other side and give
5 them an advantage. I think that, though, throughout
6 the history of the RTC, it's been very rare where
7 we've encountered those kinds of situations. Leaks
8 of criminal referrals have been almost nonexistent in
9 the five or six years we've been in business.

10 Q You testified earlier about the Madison
11 task force and its creation in early 1994 and a rule
12 that was at least temporarily put into effect by
13 Ms. Kulka requiring that only people from -- lawyers
14 from the Washington office have direct contact with
15 the Office of Independent Counsel; is that correct?

16 A That's correct.

17 Q And I believe you testified that this was
18 certainly a departure from normal RTC procedures;
19 right, to limit the opportunity of investigators in
20 field offices to have direct contact with
21 prosecutors?

22 A That's true. Clearly, this was the only

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1 case where we were working with an independent
2 counsel or independent prosecutor.

3 Q In your opinion, was -- let me rephrase
4 that.

5 To your knowledge, was this rule
6 prohibiting direct contact by RTC field investigators
7 in Kansas City with officials of the Independent
8 Counsel's office intended in any way to hinder the
9 investigation of the Independent Counsel?

10 A No, I don't believe it was.

11 Q And is it accurate that when problems were
12 identified with this new rule that it was changed, so
13 to speak, to make made it easier for the independent
14 counsel's office to obtain the information it needed?

15 A That's correct.

16 Q Now, on the subject of problems that arose
17 in the production of documents by the RTC to the FBI
18 in the fall of 1993 relating to the Madison case, did
19 you ever become aware that investigators in the
20 Kansas City office had failed to notify PLS attorneys
21 who were actually dealing with the FBI that
22 investigators had certain documents responsive to

1 Justice Department subpoenas or grand jury subpoenas?
2 A Well, I believe I was aware of generally
3 that kind of a problem. Again, I viewed that problem
4 at that time as one of communication and logistics
5 because the investigators and their documents were
6 downtown, and lawyers were out in Overland Park, and
7 I believe at that time the subpoenas were going to
8 Overland Park and without very good communication,
9 across long distances, those kinds of things can very
10 easily occur.

11 Q These are two offices in Kansas City?

12 A Right.

13 Q How were those difficulties resolved?

14 A Well, Ken Donohue from my office visited
15 Kansas City, along with Mr. Mackay with the Justice
16 Department, a couple of other people from the Justice
17 Department, the FBI, representatives from Little
18 Rock, the legal people and the investigators in
19 Kansas City and they worked out, as I understand it,
20 a procedure or protocol whereby those kinds of
21 problems would be eliminated, and the FBI could be
22 assured of prompt production of documents.

1 MR. KRAVITZ: That's all I have. Thank you
2 for spending so much time.

3 EXAMINATION

4 BY MR. BRENNER:

5 Q You stated that you had to reevaluate
6 Ms. Kulka's performance in light of the documents she
7 gave to Congressman Leach?

8 MR. ENDLER: You mean Ms. Lewis.

9 MR. BRENNER: Ms. Lewis, I'm sorry.

10 THE WITNESS: Yes.

11 MR. BRENNER: Can we strike that.

12 MR. KRAVITZ: Do you want to start over?

13 MR. BRENNER: Let's start over.

14 BY MR. BRENNER:

15 Q You stated you had to reevaluate
16 Ms. Lewis's performance in the Madison case in light
17 of the documents she produced to Congressman Leach.

18 A I believe I stated something like that,
19 yes.

20 Q During the time of the investigation into
21 Madison and the time of the referral C0004 and the
22 nine other referrals, you looked into her performance

1 and found that it was up to the standards of the RTC,
2 as you viewed them?

3 A That's correct.

4 Q So it wasn't until after her work on
5 Madison and preparing the criminal referrals was
6 complete that you had to reevaluate her performance?

7 A I don't think "reevaluating performance" is
8 the right way to put it, if that's the way I would
9 put it. I think the reevaluation went more to
10 potentially her conduct and motives in this
11 particular case. But her performance, from
12 everything I can tell, was fine.

13 Q When you say her motives, do you mean her
14 motives in conducting an investigation into Madison
15 in the first place, or her motives in contacting
16 Congressman Leach?

17 A Her motives in contacting Congressman
18 Leach. Actually, I have no reason to believe -- I
19 have not learned anything that would lead me to
20 believe that her motives in developing the criminal
21 referrals were other than just to follow the facts
22 and do the job.

1 Q Would you say it's fair to say that after
2 Ms. Lewis put in a lot of time and effort into
3 investigating Madison and the related parties, she
4 would have cause to be concerned over the drastic
5 changes that were made in RTC internal procedures?
6 And I could go further if you want.

7 A I believe that she probably believed or was
8 concerned about some of the changes and their effect
9 on the way the Kansas City office had been doing
10 business.

11 Q Do you think those concerns were
12 reasonable?

13 MR. KRAVITZ: If she had them.

14 MR. BRENNER: If she had them, absolutely.

15 THE WITNESS: Well, I mean, from where I
16 sit, I don't think they were necessarily
17 unreasonable, but I can understand how someone might
18 have those concerns.

19 BY MR. BRENNER:

20 Q When you talked about Ms. Lewis's contacts
21 with Congressman Leach and you stated that she had
22 some concerns about the RTC's changes in dealing with

1 this investigation and these referrals, wasn't she
2 primarily concerned with the handling not internally
3 within the RTC, but externally at the Department of
4 Justice with the referrals?

5 A I don't know exactly what her concerns
6 were.

7 Q Were you aware -- you stated that the
8 referrals "spent some time in Washington" when
9 talking with Mr. Kravitz. And Ms. Lewis was, during
10 that time, trying to track the referrals; isn't that
11 correct?

12 A That's correct. I believe I stated I
13 learned later on that the referral had come to
14 Washington and spent some time there before it was
15 ultimately declined.

16 Q So the combination of the constant movement
17 of the referrals from one group to another group
18 within the Department of Justice combined with the
19 changes and procedure at the RTC could reasonably
20 give Ms. Lewis, as you perceive it, cause to be
21 concerned that there may be some shenanigans going on
22 in Washington?

1 A I hesitate to say -- again, I believe I can
2 understand how she might have those concerns. From
3 my point of view from having experienced changes in
4 Washington, changes in agencies over time, you would
5 expect, I believe, some kind of turbulence, and I
6 don't have the perspective coming from Kansas City,
7 so it's difficult for me to put myself in her
8 position.

9 Q You spent a great deal of time talking
10 about how the priorities with regard to criminal
11 referrals were handled in 1990 and 1991, and there
12 was discussion of the newspaper article that
13 occurred, which prompted a similar investigation of
14 the Madison referrals. Any new information on a case
15 would cause an investigator to reevaluate their
16 priorities, wouldn't they?

17 MR. KRAVITZ: Are you suggesting that the
18 newspaper article was new information?

19 MR. BRENNER: I'm suggesting that
20 heightened public scrutiny with regard to the Madison
21 Guaranty Bank and its downfall is a piece of new
22 information, just as when an investigator talks to

1 somebody from the civil side and someone from the
2 civil side says you may want to look into X, Y or Z,
3 that those are all sorts of new information that
4 would cause someone to reevaluate, if not change, the
5 priorities.

6 THE WITNESS: I would agree with that. I
7 think that while it may not have been actually new
8 information, it was new information to the agency in
9 the sense that again, this was an institution that
10 was taken over, taken down in early '89, and we had
11 not as thorough a knowledge in one institution as we
12 would have had later on in another institution, an
13 institution we actually investigated.

14 BY MR. BRENNER:

15 Q Some of the priorities mentioned in the
16 December 1991 memo about how to prioritize within
17 Arkansas the investigations were responding to FBI
18 requests which took great priority, the geography of
19 the certain banks and perhaps common players in
20 between the banks in terms of the investigation.

21 I'm just trying to determine where
22 heightened public scrutiny would come into play, and

1 would that be a significant factor -- would the RTC
2 want to answer questions to the public about their
3 investigations.

4 A Sure.

5 Q So it would be reasonable to change
6 priorities in terms of investigations in order to
7 answer questions about the RTC's investigations?

8 A I view it to be as legitimate, yes.

9 Q When somebody -- with this particular memo
10 S/AT 0050, the December 1991 memo, certainly the
11 priorities mentioned in that memo aren't written in
12 stone, are they?

13 A You're referring to the memo that was
14 prepared by Jean Lewis?

15 Q Yes.

16 A Again, those priorities are pretty much
17 left up to the people in the field offices, and they
18 have a good deal of latitude, I think, to set
19 priorities, particularly -- again in the criminal
20 context, where you have a very long statute of
21 limitations, so you don't have the constraints that
22 you would have with the shorter civil stuff.

1 Q Ms. Lewis at this time, as you understand
2 it, was just setting priorities for investigations of
3 Arkansas institutions?

4 A My understanding, from reading that memo,
5 and I believe I've learned that she was assigned to,
6 Arkansas institutions at that time.

7 MR. BRENNER: If I may get a point of
8 clarification, the S/AT 0050 memo came from Andy
9 Tomback's files?

10 BY MR. BRENNER:

11 Q Could you explain why Andrew Tomback would
12 possibly have a memo from Jean Lewis from December of
13 1991 in his files many years later?

14 A I can't explain that.

15 Q Could you explain why he would offer to the
16 RTC IG the opportunity to go and search the offices
17 of the three RTC IG investigation officials that were
18 placed on administrative leave?

19 MR. ENDLER: I think you already asked
20 that.

21 MR. BRENNER: I did, but I wanted to bring
22 it back into the fold.

1 THE WITNESS: No, I don't know why.

2 BY MR. BRENNER:

3 Q Would Ms. Lewis alone have made the
4 decision to move Madison up on the schedule of
5 investigations?

6 A I don't believe so, no.

7 Q You stated that you had given a copy of the
8 second referrals, I believe, to Mr. Roelle -- am I
9 pronouncing his name properly?

10 MR. KRAVITZ: Roelle.

11 THE WITNESS: The second set of referrals?

12 BY MR. BRENNER:

13 Q Yes.

14 A I did not.

15 Q Did you give him a copy of the first
16 referral?

17 A The first referral I did.

18 Q Did you have any discussions with
19 Mr. Roelle where he mentioned to you, after looking
20 at the referral, that the current President may be
21 considered more than just a witness if they
22 investigated further into the referral?

1 A No.

2 Q Would it surprise you if Mr. Roelle made
3 that statement?

4 A Yes, it would.

5 Q And why is that?

6 A Because, to my knowledge, he didn't have
7 the knowledge -- and he's an experienced bank
8 regulator -- I don't believe he would discern from
9 that referral that that would be a likely outcome.

10 Q You spent some time this afternoon -- and
11 I'm coming close to the end -- discussing the new
12 procedure in terms of preparing a legal review. And
13 you stated that when you had formulated this policy
14 or been involved in the formulation of this policy,
15 that you had not anticipated or expected that the
16 legal review would be written?

17 A I think that's true, yes.

18 Q And you stated that this was the only legal
19 review that was written that you had seen?

20 A To my knowledge, yes.

21 Q Did you speak to Glion Curtis at any point
22 about this legal review?

1 A The only conversation I recall having with
2 Glion Curtis was in the context of that Wednesday
3 meeting that I believe I testified to in speaking to
4 Mr. Roelle. Glion Curtis was there at the time, and
5 it was merely kind of an update on where we were and
6 that the legal review was being conducted or would be
7 conducted, only in that context.

8 Q Would it surprise you if Mr. Curtis had
9 stated that this was the only written legal review he
10 had seen?

11 A Yes, that would surprise me.

12 Q You talked about Mr. Iorio's concern over
13 the role of the legal review and his belief that
14 there would be an approval required before the
15 referrals were sent out. Is that an accurate
16 statement?

17 A I'm drawing from my impression of my
18 conversation with Mr. Iorio. I don't know that he
19 actually said that, but he -- certainly, my
20 impression of his view was that the legal division
21 intended to take a much deeper look into the matter
22 than he felt they should take.

1 Q Would that -- if his perception were the
2 truth, would that be part of the whole territorial
3 problem that you talked about?

4 A Certainly could be.

5 Q So would the reaction he had -- believing
6 what you believe he believed, would that reaction be
7 reasonable?

8 A I don't know about reasonable. Again, I'm
9 trying to get people to work together rather than
10 defend a turf all the time, yet it seems that these
11 turf issues continually come up. I wouldn't say
12 reasonable, but again, I can understand, from the
13 standpoint of protecting turf, why he might feel that
14 way.

15 Q You talked about how press leaks affect
16 ongoing RTC investigations. What ongoing
17 investigations were there with regard to Madison at
18 the time of the leaks?

19 MR. KRAVITZ: Are you talking about
20 November 1993?

21 MR. BRENNER: November 1993.

22 THE WITNESS: There were no ongoing civil

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1 matters in November of 1993.

2 BY MR. BRENNER:

3 Q So any of the leaks that had a tendency to
4 cause great concern in the Washington office with
5 regard to civil matters wouldn't be applicable in the
6 Madison case?

7 A At that point in time, no.

8 Q In terms of the gag rule or barrier that
9 was set up between investigators and the special
10 counsel, the Independent Counsel, that rule didn't
11 last long; is that correct?

12 A My recollection is it did not last very
13 long.

14 Q And Mr. Kravitz talked to you about the
15 intention of the gag rule, which was so that there
16 would be a central point through which communications
17 focused; correct?

18 A Yes.

19 Q But you also stated earlier that Ms. Lewis
20 was the one who knew the most about the Madison
21 Guaranty referrals?

22 A That's correct.

1 Q So the reality of the gag rule was that the
2 person at the RTC who had the most information to
3 provide to the Independent Counsel was being
4 foreclosed from talking to the Independent Counsel
5 directly?

6 A I don't think that's exactly true. I think
7 that there was always an intent to allow Ms. Lewis to
8 communicate with the Independent Counsel. What the
9 rule was intended to do was make sure that those
10 initial contacts occurred with the task force lawyer
11 prior to her making the contact with the Independent
12 Counsel.

13 Q You talked earlier about whether or not
14 anybody in Washington, I believe Ms. Kulka and
15 Mr. Ryan in particular, had instructed April Breslaw
16 to essentially relay the message that they want a
17 finding that Whitewater Development Corporation did
18 not cause a loss to Madison, and you stated that you
19 believed nobody in Washington relayed that message?

20 A I state that I had no personal knowledge of
21 a message like that being relayed to Ms. Breslaw by
22 Mr. Ryan or by anybody else.

1 Q But that doesn't mean, necessarily, that
2 that message didn't occur?

3 A No.

4 MR. BRENNER: I have no questions for now.

5 MR. KRAVITZ: I just have two points of
6 clarification, and I don't think it's going to raise
7 anything else.

8 EXAMINATION

9 BY MR. KRAVITZ:

10 Q You were asked whether in November of 1993,
11 at the time of the leaks to the press, there was any
12 ongoing civil investigation in the Madison case, and
13 I believe your answer was no at that time; is that
14 correct?

15 A Yes.

16 Q The civil investigation in the Madison
17 case, however, started again in January of 1994;
18 correct?

19 A Correct.

20 Q And was subject to any damage that could
21 have been caused by the leaks in November 1993;
22 correct?

1 A Potentially.

2 Q And of course, there was a criminal
3 investigation going on in November of 1993 at the
4 time of the leaks, wasn't there?

5 A November '93, the referrals had been made.
6 I don't know to what extent a criminal investigation
7 had been started up again.

8 Q Well, this was the time that Mr. Mackay was
9 out in the --

10 A I'm just not certain -- it was November, I
11 believe. You're right.

12 Q So Mr. Mackay was out in Kansas City
13 meeting with --

14 A In November of '93, that's correct.

15 Q -- with criminal investigators in the field
16 office and there was a criminal investigation
17 ongoing?

18 A There was certainly document production
19 underway, yes.

20 Q Now, you were asked some questions about
21 changing priorities -- changing RTC priorities as a
22 result of press interest in a certain -- or public

1 interest as a result of press stories in a certain
2 failed financial institution, and I believe you
3 testified that as a general matter, it might be
4 reasonable for the RTC to advance an investigation of
5 a certain failed financial institution, if necessary,
6 to answer questions about RTC investigations.

7 You've also testified earlier today that
8 you have no information about how it was, in fact,
9 that the Madison -- that the criminal investigation
10 of the Madison case was actually advanced in 1992; is
11 that correct?

12 A Well, let me respond this way. If I
13 responded as you suggested earlier, I didn't mean to
14 give the impression that it was legitimate to change
15 priorities merely to answer questions. I meant to
16 say that the priorities could be changed based on new
17 information or information that came to our attention
18 that then when served as a lead, one began to follow
19 that lead and additional information fell into
20 place. So I'm not exactly suggesting --

21 Q I wanted to make sure that the record is
22 clear, that you are not suggesting in light of the

1 limitations on your understanding as to how the
2 decision to advance the Madison criminal
3 investigation was made, that it was reasonable to
4 advance the Madison investigation from whenever it
5 was scheduled to earlier in 1992. I just wanted to
6 make sure you weren't making that suggestion. I
7 don't think you were, but I wanted to make sure the
8 record was clear.

9 A Can you repeat that.

10 Q Don't even bother repeating it. Let me try
11 to rephrase it.

12 I want to make sure that the record is
13 clear that you are not stating an opinion that it was
14 reasonable for the criminal investigation in the
15 Madison case to be advanced as it was in 1992 in
16 light of the fact that you've already testified you
17 don't know anything about why that investigation was
18 advanced.

19 A No. I guess what I'm trying to say -- what
20 I tried to say was any similar situation where new
21 information would come to our attention from any
22 source that would then lead to a fact pattern that

1 eventually could lead to another criminal referral or
2 some sort of a claim that we didn't think we had
3 available to us could eventually lead a field manager
4 to change priorities, and that's all I was trying to
5 say.

6 Q So as a general matter, it can be
7 reasonable to consider new information that might
8 appear in a news article or elsewhere, but as a
9 specific matter, you state no opinion as to the
10 reasonableness of advancing the criminal
11 investigation in the Madison case in 1992; is that
12 correct?

13 A That's fair, yes.

14 MR. KRAVITZ: Thank you.

15 EXAMINATION

16 BY MR. BRENNER:

17 Q Did you think it was reasonable to advance
18 the 1992 Madison criminal investigation?

19 A Well, again, those decisions are within the
20 purview of the local managers.

21 Q As head of investigations, you didn't think
22 it was unreasonable?

1 A I did not think it was unreasonable, nor
2 really was it my role at that point to interject
3 myself into those decisions.

4 Q And just for the record, you stated that
5 you do not believe that advancing Madison or
6 investigating Madison was in any way politically
7 motivated by the RTC?

8 A I have no reason to believe it was
9 politically motivated.

10 Q What exactly was the nature of the civil
11 start-up in 1994 with regard to Madison?

12 A Well, the RTC Completion Act revived the
13 civil statutes that had expired in some of those
14 earlier thrift institutions. They were revived to
15 the extent we could prove fraud or intentional
16 misconduct.

17 Q But hadn't the determination already been
18 made that there was no officer insurance liability
19 and so basically, even if you were pursuing an
20 investigation, you didn't expect to get money from
21 it?

22 A I think a review of the prior

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1 recommendations and investigation would indicate that
2 the people making those recommendations at that time
3 felt there were no or very little recovery potential
4 in the directors and officers, that's correct.

5 Q And you stated one of the primary goals of
6 the RTC is to recover a civil award?

7 A That's correct.

8 Q A civil review in 1994 of Madison would not
9 have furthered the goal of the RTC in terms of
10 fundraising?

11 A Again, this was an institution that
12 received a rather limited investigation in '89 and
13 '90, and it's certainly conceivable that there were
14 claims or claims that could have been made that were
15 not looked at as carefully and as thoroughly as they
16 should have been the first time around.

17 Q The reality is that the leaks really didn't
18 hurt the civil investigation into Madison to any
19 great degree in your opinion.

20 A I really can't say because I've not been
21 that closely involved with the civil investigation,
22 to say whatever the publicity surrounding this case

1 had any effect one way or the other.

2 Q But you have come to the knowledge that
3 there was not a lot of opportunity for recovery for
4 the RTC? In other words, there wasn't a lot of money
5 to be recovered?

6 A Those were the recommendations made by the
7 earlier -- from the earlier examination and indeed
8 from some follow-up work that the Kansas City people
9 did, that's true, yes.

10 MR. BRENNER: They're all set. We're all
11 done?

12 MR. KRAVITZ: Yes. Thank you.

13 MR. BRENNER: I'd like to thank the witness
14 and counsel.

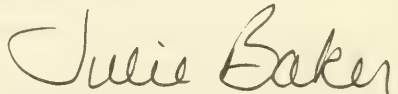
15 (Whereupon, at 5:12 p.m., the deposition
16 was concluded.)

17 -----
18 JAMES R. DUDINE
19
20
21
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997

DEPONENT DUDINE, JAMES R.

ERRATA

<u>PAGE</u>	<u>LINE</u>	<u>CHANGE FROM</u>	<u>CHANGE TO</u>	<u>REASON</u>
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DEPONENT DUDINE, James R.

ERRATA

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**DEPOSITION OF EARL FLETCHER JACKSON
IN RE: S. RES. 120**

THURSDAY, OCTOBER 19, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of EARL FLETCHER JACKSON, called for examination pursuant to notice of deposition, at 11:55 a.m. in Room 534 of the Dirksen Senate Office Building, before JANE W. BEACH, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.
Majority Chief Counsel
LANCE COLE, Esq.
Minority Deputy Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PAUL J. FISHMAN, Esq.
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Room 4114
Washington, DC 20530
On behalf of the Deponent.

ALSO PRESENT: ANDREW M. SCHAUER

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EXHIBITS

Earl Fletcher Jackson DEPOSITION NUMBER	IDENTIFIED
Exhibit 7640	53, 2577
Exhibit 1547-1549	75, 2579
Exhibit FBI 1542-1543	105, 2582

1 PROCEEDINGS
2 COMMITTEE CONFIDENTIAL

3 (11:55 a.m.)

4 Whereupon,

5 EARL FLETCHER JACKSON

6 was called for deposition in the above-entitled
7 matter and, having been first duly sworn by the
8 Notary Public, was examined and testified as
9 follows:

10 EXAMINATION

11 BY MR. GIUFFRA:

12 Q Mr. Jackson, would you please state your
13 name for the record?

14 A Fletcher Jackson. The first name is
15 actually Earl, Earl Fletcher Jackson.

16 MR. GIUFFRA: Mr. Jackson, this is a
17 deposition that is being conducted pursuant to Senate
18 Resolution 120, a copy of which I have here for you
19 if you have an interest in seeing it.

20 This Resolution establishes a special
21 committee administered by the Banking Committee to
22 conduct an investigation involving Whitewater

4

1 Development Corporation, Madison Guaranty Savings &
2 Loan Association, Capital Management Services, Inc.,
3 and other related matters.

4 My name is Robert Giuffra. I am the Chief
5 Counsel on the Senate Banking Committee.

6 To my left is Lane Cole, who is Democratic
7 Deputy Special Counsel, and to his left is Andrew
8 Schauer.

9 MR. GIUFFRA: You understand that you
10 have a right to be represented by counsel here
11 today?

12 THE WITNESS: I will waive that right.

13 MR. GIUFFRA: You would waive that?

14 THE WITNESS: Yes.

15 MR. GIUFFRA: Is Mr. Fishman, who is
16 present, representing you, or is he representing the
17 Department of Justice?

18 THE WITNESS: I think it is in his
19 official capacity, whatever it is.

20 He is representing me as an employee, I
21 guess, of the Department of Justice, but not on a
22 personal basis.

1 MR. FISHMAN: That is correct.
2 I am Paul Fishman, Deputy Associate
3 Attorney General. I am appearing on behalf of the
4 Department of Justice and for Mr. Jackson in his
5 official capacity.

6 (Discussion off the record.)

7 MR. GIUFFRA: Mr. Jackson, this is a
8 deposition that is being conducted in advance of a
9 public hearing that the Special Committee will
10 probably be conducting on Justice Department matters
11 in November sometime, and there is a possibility you
12 will be asked to testify at that hearing. We will
13 notify you in advance.

14 The procedure today is fairly
15 straightforward. We will ask you a series of
16 questions.

17 I will go first, and then Mr. Cole will
18 ask questions.

19 You will be testifying under oath. If at
20 any time today you do not understand the question,
21 please let us know and we will clarify the question.
22 If you need a break, again, just let us know and we

1 will take a break.

2 The Court Reporter will prepare a record
3 of the questions and answers. This deposition
4 will be treated as Committee Confidential until
5 the commencement of the hearings, meaning that it
6 will not be made available to the public or to the
7 press.

8 Prior to the hearings we will be advising
9 you of your right to review the transcript, and that
10 will probably be four days before the start of the
11 hearings.

12
13 BY MR. GIUFFRA: (Resuming)

14 Q Okay, let's begin.
15 Do you have any questions?

16 A No.

17

18

19

20 Q And your present business address?

21 A That would be 425 West Capitol, 5th
22 Floor.

1 Q And your present position?

2 A Assistant U.S. Attorney.

3 Q Is that in the Eastern District of
4 Arkansas?

5 A Correct.

6 Q Could you just briefly state your
7 employment history from law school to the
8 present?

9 A After law school -- I got out in the summer
10 of 1963 -- I went to work for the Chief Justice of the
11 Arkansas Supreme Court as a law clerk. I stayed
12 there approximately two years.

13 I then went to work for the Arkansas
14 Attorney General's Office.

15 I stayed there until an election where
16 everybody got thrown out.

17 That was about 1957.

18 MR. COLE: 1967?

19 THE WITNESS: 1967, yes; '67.

20 Then I went to work for a law firm by the
21 name of Howe, Price, Howe & Worsham, state senator
22 Max Howe's law firm.

1 I stayed there until 1971, and went --
2 by chance one morning over a cup of coffee I
3 find out that the U.S. Attorney was looking for
4 somebody.

5 So I wind up over there about March 27 of
6 1971. I have been there ever since.

7 BY MR. GIUFFRA: (Resuming)

8 Q Directing your attention to the period
9 September 1992 through November of 1993, what were
10 your responsibilities at the U.S. Attorney's office
11 in that period?

12 A Well, I've done everything.

13 I started out doing mostly low-level
14 junk. Then I wound up doing tax cases and financial
15 cases.

16 Then in '83 I went over to doing civil
17 cases exclusively for about five years.

18 Then I went into the savings & loan things
19 sometime I think around early December of '89, and I
20 stayed with that off and on for about three years,
21 sometimes going back to civil.

22 Then I went back to civil for awhile.

1 Then I got moved back to criminal.
2 I've moved from criminal to civil seven
3 times in twelve years.
4 (Laughter.)
5 THE WITNESS: Then I was back in criminal
6 I guess at about the time the David Hale thing came
7 in.
8 And now I am back in civil.
9 BY MR. GIUFFRA: (Resuming)
10 Q During the period of the David Hale
11 matter, when did that come into your office, as best
12 you can recollect?
13 A June of 1993.
14 Q And you were in the criminal section as of
15 June of '93?
16 A I still had some foreclosures, but I would
17 say it was about half and half at that point.
18 Q Were you operating as a line attorney?
19 Or were other attorneys reporting to
20 you?
21 A No, I've never been a supervisor.
22 I've always been at the bottom.

1 Q Now were you handling other matters --
2 strike that.
3 In June of '93, were you handling other
4 matters related to savings and loans?
5 A No.
6 I think it had been a year.
7 I think I am still in a savings & Loan
8 slot.
9 You know, when they created slots, I
10 think I got moved into a savings and loan -- I
11 think I've been in it for I don't know how long. But
12 there wasn't any savings & loan cases for a period of
13 time.
14 So I think it had been a year before Hale
15 before I had been involved in any savings and loan
16 cases.
17 Q So Hale would have been the first one? Or
18 Hale was exactly the same as most cases, but was that
19 the first savings and loan case that you've gotten
20 involved in?
21 A Oh, Lord, no.
22 Back in 1989, First South, which was the

1 big one.

2 Q Were there any other savings and loan
3 cases that you were involved in, to the extent that
4 they are public?

5 A They are public.

6 Independent Federal.

7 I reviewed some that were not public that
8 never went anywhere, but those were two that were
9 indicted.

10 Q In June of 1993, how did you come to learn
11 about allegations against Hale?

12 A The FBI agent who was assigned to it I
13 think got me into a meeting with the supervisor, and
14 then I think they contacted Pence and he was assigned
15 to that.

16 Q Was Pence the Acting U.S. Attorney at that
17 time?

18 A Right.

19 Yes.

20 Q Do you recall who the supervisor was at
21 that time?

22 A At the FBI? That would have been --

12

1 Q No, your supervisor.

2 A I'm not sure we had one, did we?

3 Mack Dotson had been the chief of the
4 Criminal Section, and he left with Banks. I'm
5 assuming that there was no chief --

6 Q So you would have been reporting directly
7 to the U.S. Attorney?

8 A Yes.

9 I don't think there was at that point in
10 time a chief of either section, because Pence had
11 been the civil --

12 MR. FISHMAN: Acting U.S. Attorney.

13 THE WITNESS: Yes, Acting.

14 BY MR. GIUFFRA: (Resuming)

15 Q About how many lawyers are there in the
16 U.S. Attorney's Office in Little Rock?

17 A I think back then there were probably 17,
18 18.

19 Some had left when Banks left, so I don't
20 know really what the count was.

21 Q Do you recall the name of the FBI agent
22 who contacted you?

1 A It would be David Reign, R-E-I-G-N, I
2 believe is how it is spelled.

3 Q Was he someone who worked in the Little
4 Rock office?

5 A Yes.

6 We had worked on some previous cases.

7 Q So he was just calling you because of his
8 prior relationship with you?

9 A I would assume so, yes.

10 Q And that is fairly standard procedure for
11 FBI agents to contact the --

12 A It is not now, but it has been.

13 When I first went up there, that was
14 standard procedure.

15 Then it changed over to where everything
16 went to a chief assistant.

17 Then when you didn't have a chief
18 assistant I guess, in the interim, that is the way it
19 worked.

20 But now everything has to go through the
21 Chief of Criminal.

22 Q What do you recall Mr. Reign saying

1 anything to you about David Hale when he first
2 contacted you?

3 A Just that they had in a referral from SBA
4 that the Inspector General of SBA referred the matter
5 to the FBI for investigation, and would I like to
6 look at it.

7 I had done one just like it back in the
8 '70s.

9 Q What was the matter that you had been
10 involved in previously?

11 A Swarak & Smith --

12 Q You may want to spell --

13 A Swarak, S-W-A-R-A-K.

14 Do you know Mark Toohey?

15 Q Yes.

16 A He was one of the defense attorneys in
17 that case.

18 Small world, isn't it?

19 Q Yes. That's for sure.

20 And this would have been in June of '93
21 that you --

22 A That is to the best of my

1 recollection.

2 Q What did he tell you about the allegations
3 about Mr. Hale?

4 A Just would I like to read the stuff.

5 Q So you then read the file, is that
6 correct?

7 A Yes.

8 Q And did you make any judgments based on
9 your review of the file?

10 MR. FISHMAN: Can we go off the record a
11 second?

12 MR. GIUFFRA: Sure.

13 (Discussion off the record.)

14 BY MR. GIUFFRA: (Resuming)

15 Q All right, Mr. Jackson, you obtained
16 a copy of this SBA file from Mr. Reign;
17 correct?

18 A A copy of the letter of referral from the
19 Inspector General of SBA with the attached audit
20 items.

21 Q After reviewing the letter of referral and
22 attached audit items, did you determine that you

16

1 needed to take any further steps?

2 A We worked on that one.

3 It never went anywhere, but we worked on
4 it.

5 Q What type of -- what did you do to "work on"
6 the file?

7 A At the time there was another
8 investigation, which was undercover, which involved
9 Mr. Hale, so we could not do anything that would be
10 public.

11 So what we did, we went around
12 gathering up documents from, oh, like the FBI has
13 some sort of in like to credit reports and to
14 corporations.

15 We tried getting all of the
16 information we could on these various and
17 sundry organizations and did all of the
18 investigation we could do without having to go ask
19 somebody something which would trigger somebody
20 knowing something.

21 So we more or less -- then we decided we
22 would do a search warrant at a later point in time,

1 but we did all the background stuff and
2 gathered up everything we could do without having to
3 issue any subpoenas or having to go interview
4 anybody.

5 Then we decided to -- there was a slight
6 person.

7 Reign was involved in all the Waco stuff.
8 He was on the SWAT team.

9 So we had, you know, some delays.

10 We eventually did a search warrant for
11 Hale's office.

12 Q Would that have been July 21st or July --

13 A Whatever the date is.

14 The only thing I can tell you, if you know
15 what day Vince Foster's death was, it would be the
16 day before is when we got the cert form.

17 MR. COLE: He knows that.

18 BY MR. GIUFFRA: (Resuming)

19 Q So that would have been July 19th, 1993?

20 A Yes.

21 But that referral never went anywhere.

22 Q Did you ever discuss the fact that you

1 were going to be getting a search warrant with
2 anyone?

3 A With Steve Irons, FBI; David Crane, FBI;
4 Gretchen Hall, Financial Analyst, FBI; my secretary
5 typed an affidavit, and either the morning of the
6 search or the afternoon before the search, I told
7 Pence because I was afraid there would be a screw-up
8 and we would all be in the newspapers or on the six
9 o'clock news, and I wanted to alert him if something
10 went wrong.

11 So that is the only people I told or had
12 any discussion with.

13 Q Pence was U.S. Attorney at the time?

14 A Yes.

15 But that was just right before it, because
16 I was -- the search was in a very public place.

17 And if you had the six o'clock news out
18 there wondering what was going on, like they usually
19 do, I wanted to alert him in case anything went on.
20 But he didn't really know any of the details of what
21 it was about.

22 Q Was that because of the location of Mr.

1 Hale's office?

2 A Yes.

3 It was right among the high fashion
4 boutique area.

5 The FBI -- we discussed about this, and them
6 just sending female agents, well dressed, and some
7 people that did not look like agents out there to do
8 it, But you would run a pretty good risk of being
9 spotted if you were there.

10 Q You mentioned previously an undercover
11 operation involving Mr. Hale.

12 Were you working on that operation?

13 A No.

14 That was out of another office.

15 Q Do you recall what office that was?

16 A I don't -- Let's go off the record for a
17 second.

18 MR. FISHMAN: Off the record.

19 (Discussion off the record.)

20 MR. GIUFFRA: Let's go back on the record.

21 You previously testified that there was
22 another undercover operation involving Mr. Hale;

20

1 correct?

2 THE WITNESS: Yes. That is what caused
3 the delay.

4 BY MR. GIUFFRA: (Resuming)

5 Q Who advised you of the other undercover
6 operation?

7 A That would have been people at the FBI.

8 Q Okay, did they --

9 A But they were not involved, but they know
10 about it.

11 Q Did they tell you any more about this
12 undercover operation against Mr. Howe?

13 A No.

14 Q You don't know anything more as you sit
15 here today about what the undercover operation was
16 about.

17 MR. FISHMAN: You may confine that to a
18 "yes" or "no" answer, if we could, for the moment.
19 Okay?

20 THE WITNESS: I don't know anything of the
21 details, or any of the rest of it. I think it has
22 probably been in the newspaper at some point, but I

1 didn't really pay any attention.

2 BY MR. GIUFFRA: (Resuming)

3 Q Do you have any knowledge as you sit here
4 today as to what office would have been handling that
5 undercover operation?

6 A No.

7 All I know is it caused us, you know, to
8 have to slow down, or take a little extra time --

9 Q In doing the search warrant?

10 A Yes.

11 Q What happened after you did the search
12 warrant? Collected the documents?

13 A We took them right to the -- okay, the FBI
14 picked them up and got them back out to the FBI
15 office around 11:00 o'clock that morning.

16 I went out and went through them.

17 At the same time I called the attorney
18 for -- see, we'd got Mason Phipps down to Dallas to the
19 SBA's Examiner's office --

20 Q This would --

21 A -- and had been going through all of the
22 exam items.

22

1 I had made two trips down there.

2 Q This would be prior to the search warrant?

3 A Yes.

4 And when I was down in Dallas, I saw
5 something in one of the files that I thought might be
6 something worth pursuing.

7 Q And what was that that you saw in the
8 files in Dallas that you thought might be worth
9 pursuing?

10 MR. FISHMAN: Again -- Can we go off the
11 record again?

12 (Discussion off the record.)

13 MR. GIUFFRA: Would you read back my last
14 question?

15 THE REPORTER: "QUESTION: This would be
16 prior to the search warrant?

17 "ANSWER: Yes. And when I was down in
18 Dallas, I saw something in one of the files that I
19 thought might be something worth pursuing.

20 "QUESTION: And what was that that you saw
21 in the files in Dallas that you thought might be
22 worth pursuing?"

1 BY MR. GIUFFRA: (Resuming)

2 Q You can answer.

3 A I saw a Xerox copy that had three checks
4 Xeroxed on it.

5 One was to Blame, Incorporated; one
6 was to River Valley; and the other one was to
7 MacIntyre.

8 What that did was to trigger the
9 idea of how Hale had done the Townsend
10 transaction and leveraged the money from SBA, the
11 circular transaction for which he eventually was
12 indicted.

13 Q Did you testify you were contacted
14 sometime in June by the FBI, between June and
15 the time that you executed the search warrant of
16 Mr. Hale's office, did you speak to anyone at the
17 SBA?

18 A Yes.

19 Q Who did you speak with there?

20 A Walter Peterson, who is here in
21 Washington; the attorney, who escapes me right
22 now; Chuck Odom, who is the examiner down in

1 Dallas.

2 I spent a lot of time with the SBA people
3 before we did the search warrant.

4 Q What did the general -- I know we have a
5 time constraint here -- what generally did the SBA
6 officials say to you about capital management and/or
7 David Hale?

8 A Well, see, we started out with the initial
9 referral; but after -- the day of the search warrant,
10 the day they got the documents and went out
11 there, I called the law firm that had handled the
12 lawsuit involving the Townsends and went down and
13 they gave me their documents, and it laid it all out,
14 which was all of the information, just about, that
15 you would need to put together the indictment, they
16 had.

17 Then I called Mr. Peterson and he told me
18 about Hale's letter claiming that the money was from
19 the sale of a small Center by his wife.

20 So I would say that Mr. Peterson, along
21 with that law firm, are the ones who handed us the
22 indictment on a silver platter.

1 The SBA was very cooperative.
2 Q What was an "LHM"?
3 Let me show you a document, FBI -- it's
4 marked as 748-49.
5 (Handing document to the witness.)
6 A I don't know what -- I guess that is
7 one of their -- what is the date of this thing?
8 June 21.
9 This is about when that thing started, you
10 know, when we first started looking.
11 This June date -- and those are the names
12 that were in the initial referral.
13 Q From the SBA?
14 A Yes.
15 Q Do you remember anything more about that
16 initial SBA referral?
17 A It involved '91 and '90 transactions.
18 Q '90 and '91?
19 A Yes.
20 But there was no loss to the
21 government.
22 Q Were any persons identified as possible

1 targets in that referral?
2 A David Hale and Anderson, the people that
3 you have got there in your list.
4 Q Do you recall whether there was any
5 mention in that referral of Jim Guy Tucker?
6 A No.
7 MR. FISHMAN: I'm sorry? "No," you don't
8 remember, or "no," there wasn't?
9 THE WITNESS: There was not.
10 BY MR. GIUFFRA: (Resuming)
11 Q Just to speed the process up, was there
12 any reference to James or Susan McDugal in that
13 referral that you can recall?
14 A No.
15 These were strictly '90 and '91
16 transactions.
17 Q Okay.
18 A What you are talking about occurred back
19 in the mid-'80s.
20 Q In the mid-'80s.
21 But there was nothing about them?
22 A No.

1 Q Okay. After you reviewed the
2 documents that you obtained in connection with the
3 search warrant, about how many documents were
4 there?

5 A With the search warrants we obtained a
6 series of files that primarily pertained to the '90
7 and '91 -- the loan files is what we grabbed.

8 There wasn't a whole lot there worthwhile
9 looking at, though.

10 Q It was narrowly focused on the '90-'91
11 transaction?

12 A That is what the search was.

13 Q So you didn't just go in there and take
14 every piece of paper in Capital Management?

15 A No.

16 We did what we thought would be
17 appropriate as far as the magistrate was concerned of
18 having, you know, a limited-scope search.

19 Q In any of the documents that you obtained
20 in connection with that search warrant, was any
21 reference made to either Jim Guy Tucker or --

22 A Yes.

1 We picked up the Castle -- not the Castle,
2 but some of the -- we picked up some of the Tucker loan
3 files that had been referred back through the -- I'm
4 trying to remember why we picked those up, but we
5 did, and we picked up Master Marketing, a McDugal
6 file.

7 You want the list of loan files?

8 Q Yes.

9 A We picked up all the loan files that had
10 been delinquent that had gone back through the years,
11 which is what related back to the '90 and '91.

12 In other words, '90 and '91 did refer back
13 to delinquencies.

14 Q And the Master Marketing loan is the
15 \$300,000 loan to Susan McDugal?

16 A Right.

17 Q Was there any reference in any of the
18 documents that you obtained in connection with that
19 search warrant to then-Governor Clinton?

20 A No.

21 Q Do you recall any reference in any of the
22 documents obtained in connection with that search

1 warrant to Whitewater Development Corporation?

2 A No.

3 Q You picked up -- just to clarify this -- you
4 picked up the delinquent loan files because that was
5 specified in the search warrant?

6 A Yes.

7 And those were some that were included in
8 the list.

9 Oh, I fixed up a list of about 18 loan
10 files that I thought we could justify getting under
11 the SBA referral.

12 Q You just basically picked the delinquent
13 ones because you thought the delinquent ones would
14 be --

15 A No, the delinquent ones -- the referral
16 basically related to a thing that Hale was doing,
17 which was making new loans to cure old
18 delinquencies.

19 Q I understand.

20 A So this stuff was relevant, in a way.

21 Q What was the next action that you
22 took following a reviewing of the documents

30

1 that you obtained in connection with the search
2 warrant?

3 A See, once I got the stuff from the law
4 firm, I sat down and started drafting an indictment.
5 I had an indictment drafted within four days.

6 Q So this would have been before the end of
7 July?

8 A Yes.

9 When Hale's attorneys first came in, I
10 gave them a copy of the proposed indictment. That
11 was within about a week.

12 Q Let me show you a document which is marked
13 as Department of Justice 5553, and it runs to 5558.
14 (Handing document to the witness.)

15 A Okay. This is the indictment that did
16 come out later.

17 This is the second draft of the
18 indictment.

19 Q So there was an earlier draft?

20 A Yes.

21 It was the same thing, though.

22 The only thing was, this is a little bit

1 shorter.

2 It got rid of some language, but if you've
3 seen one, you have in effect seen the both of them.

4 Q Okay.

5 And the first draft of this indictment
6 bears your signature at page 557?

7 Is that correct?

8 A Huh?

9 Q You signed this?

10 A Oh, yes.

11 This is the indictment itself.

12 Q Okay. And the first draft of this
13 indictment you prepared in July of '93?

14 A Yes.

15 Q Now after you prepared the draft of, let's
16 call this for shorthand, "the Hale indictment," what
17 action did you take?

18 MR. FISHMAN: Provided he is not going to
19 get into any grand jury issues.

20 We have to draw a very strict line.

21 MR. GIUFFRA: I understand, because of the
22 6(e) problem.

32

1 MR. FISHMAN: Well, I wouldn't call the
2 6(e) a "problem." I would call it a --

3 MR. COLE: -- stricture.

4 MR. FISHMAN: -- legal requirement.

5 MR. COLE: -- legal protections provided by
6 6(e).

7 MR. FISHMAN: That's right.

8 And I do not want to risk Mister -- and I am
9 sure the Committee does not want to risk Mr.
10 Jackson's violating the Rule.

11 MR. GIUFFRA: Obviously.

12 THE WITNESS: We had a variety of
13 discussions with a variety of lawyers representing
14 the various and sundry proposed defendants; and you
15 also had a continuation of -- we were having problems
16 getting the records from Plasydy Bank & Trust, back
17 records, that we were needing.

18 So, I learned a long time ago you do not
19 indict before you have got your documents, and so we
20 kept trying to get the stuff from Plasydy Bank that
21 we had subpoenaed.

22 MR. GIUFFRA: Let's go off the record for

1 a second.

2 (Discussion off the record.)

3 BY MR. GIUFFRA: (Resuming)

4 Q Mr. Jackson, you testified you prepared
5 the draft of the indictment, then you spoke with some
6 of the lawyers for some of the people who were
7 possible defendants in the action.

8 A All of the defendants.

9 Q Now would that have been shortly after you
10 prepared the indictment?

11 A Yes, it would have been -- Hale's attorney
12 called the same day of the --

13 Q Search warrant?

14 A -- search warrant wanting a copy of the
15 affidavit for the search warrant.

16 I told the magistrate we had no objection
17 to releasing that.

18 I'm thinking that that was about on a
19 Wednesday, or something like that.

20 It was actually about a week from the
21 following Friday before the first two attorneys
22 showed up at my office to talk about Hale.

1 And I'd already -- you know, the indictment
2 was already drafted, so I just handed them a copy of
3 the proposed indictment.

4 Q And as of July of '93, was David Hale a
5 Municipal Judge?

6 A Yes.

7 He was sitting on the Bench the morning of
8 the search warrant.

9 He had to leave the Bench to come out to
10 his office.

11 Q Is the municipal judge -- is that your trial
12 court in Arkansas?

13 A It's Small Claims, Misdemeanors, Traffic,
14 whatever.

15 Q Was he a prominent figure in Little Rock
16 at the time?

17 A I wouldn't think so.

18 I mean, that's not exactly a high-level
19 position.

20 Q Do you recall the name of his lawyer?

21 A Oh, initially it was Bill Price, who I
22 used to work for at that law firm I was telling you

1 about.
2 Q P-R-I-C-E?
3 A Yes.
4 And Richard Mays, who is a prominent Black
5 attorney in Little Rock.
6 Q That is M-A-Y-S?
7 A Um-hmmm.
8 Q And they came to see you sometime the end
9 of July?
10 A They probably came to me the Friday-week
11 after the search.
12 We met at my office.
13 Q What do you recall about your conversation
14 with Mr. Price and Mr. Mays?
15 MR. FISHMAN: Again let's go off the
16 record.
17 (Discussion off the record.)
18 THE WITNESS: There were only two things
19 discussed. I gave them a copy of the indictment.
20 They indicated that they had no knowledge whatsoever
21 and needed to go back and talk to Hale about what was
22 in the indictment.

1 Mays asked me about the prospect of a
2 pretrial diversion, and I said, no.
3 BY MR. GIUFFRA: (Resuming)
4 Q What is a pretrial diversion?
5 A A pretrial diversion is a mechanism
6 whereby someone is not charged.
7 They more or less sign an agreement that
8 they will do a period of probation with the
9 Probation Office and at the end of it everything is
10 wiped out.
11 It is a mechanism where you are not
12 charged. It is kind of a probationary -- informal
13 probationary thing.
14 MR. FISHMAN: Off the record for a second.
15 (Discussion off the record.)
16 MR. GIUFFRA: Back on the record.
17 BY MR. GIUFFRA: (Resuming)
18 Q Sir, were there any what might be called
19 plea negotiations during this meeting?
20 A No.
21 And there wasn't at the next one, either.
22 Q There was a subsequent meeting with Mr.

1 Mays?
2 A No.
3 Mays didn't come back.
4 Mr. Price came back, and Randy Coleman
5 came back.
6 Q Do you recall approximately when that was?
7 A That would be within, oh, I would say a
8 matter of a couple of days.
9 Q This is still toward the end of July?
10 A No.
11 I think we are over into August now.
12 Q Early August?
13 A Yes.
14 Q And do you recall anything about that
15 meeting?
16 A That was to seal the indictment and give
17 them more time for, I'm not sure what.
18 In other words, they more or less wanted
19 to get put off -- they wanted it put off. There was a
20 statute of limitations problem is why I had to go,
21 and they finally accepted my position that I was
22 afraid to wait until the absolute last month.

1 Then the proposition was, would I seal it,
2 an indictment.
3 Q You had not empaneled the grand jury at
4 this point?
5 MR. FISHMAN: Again, to be clear, it is my
6 understanding that grand juries sit all the time.
7 Assistants don't actually empanel grand juries.
8 If your question is: Had he started to
9 present evidence to the grand jury, I am not sure
10 that that is a question we want to get into at this
11 point.
12 MR. FISHMAN: Let's go off the record.
13 (Discussion off the record.)
14 BY MR. GIUFFRA: (Resuming)
15 Q Mr. Jackson, it appears the grand jury
16 returned in December 1993, Correct?
17 A Yes.
18 Q When to the best of your recollection do
19 you recall you first began presenting evidence to the
20 grand jury?
21 MR. COLE: That is 1992, for the record.
22 MR. FISHMAN: No, it is 1993.

1 MR. COLE: '93? I'm sorry.

2 BY MR. GIUFFRA: (Resuming)

3 Q 1993?

4 A Yes.

5 It would have been 1993.

6 The only evidence I presented -- okay,
7 that's right. You need to -- it would have been about
8 two days previously is when the start of the matter,
9 when the grand jury first saw the indictment.

10 BY MR. GIUFFRA: (Resuming)

11 Q So about September 21st?

12 A Something like that.

13 Q And there was a concern -- let's go back to
14 the meeting in August with Mr. Price and Mr. Coleman.
15 They had a concern about if the grand jury returned
16 an indictment, that the indictment be sealed?

17 A They were wanting the matter put off.

18 Because of statute of limitations problems
19 I told them I could not.

20 Then they came up with the proposition of
21 sealing the indictment, and I told them that could no
22 longer be done. That is what we used to do back in

40

1 the old days, but now you have to justify sealing an
2 indictment.

3 Q Did they indicate why they wanted to seal
4 the indictment?

5 A No.

6 Q They gave you no indication at all?

7 A I mean, I -- you know, they didn't tell me,
8 but they were wanting it put off for some reason.

9 Q Am I correct, sir, that a sealed
10 indictment would not have been made public?

11 A Correct.

12 Q Do you have any understanding as to why
13 they wanted to keep the indictment from becoming
14 publicly known?

15 A I don't know.

16 They didn't -- I mean, they didn't tell me.
17 That's the best I can answer you.

18 Q Did you enter into any plea negotiations
19 at that time?

20 A No.

21 Q Did you subsequently have another meeting
22 with Mr. Hale or Mr. Hale's lawyers?

- 1 A The next time it was Randy Coleman that
2 came by, either the next day or the day after.
3 Q This is still early August?
4 A Yes.
5 Q And --
6 A Basically the conversation at that time
7 was the availability of a misdemeanor. Also
8 discussed at that time was where Hale could lead to,
9 which would be Jim McDugal, and after that to
10 possibly Tucker, and possibly to the Clintons.
11 I told him that there was no applicable
12 misdemeanor in financial crimes. You have to have
13 \$100 or less to get out of the misdemeanor category
14 by any statute; and that in my view under the
15 circumstances they would have to be a felony.
16 He left, and from there on about a week
17 later Ms. Casey came in and all of the negotiations
18 from then on were with Mr. Coleman, Mr. Johnson, and
19 Ms. Casey.
20 I wasn't involved in those discussions.
21 Someone went over my head.
22 Q Let's go back a little bit.
-

- 1 We are probably talking the third week of
2 August is this third meeting that you had with
3 counsel for Hale?
4 A You would be talking in the first two
5 weeks of August.
6 I don't have a calendar.
7 I'm referring everything back to the Grand
8 Jury, and then over to -- and I don't remember exactly
9 what day Ms. Casey came in, and I don't remember
10 exactly when Michael Johnson became First Assistant,
11 and then you come over to September 23rd.
12 So you are talking about a time frame in
13 there.
14 But to the best of my recollection, the
15 events that we are talking about, the meetings that I
16 had with Hale's attorneys, occurred within the first
17 say ten days of August.
18 Q Now let's call it the third meeting -- this
19 is the meeting with Mr. Coleman.
20 A Okay.
21 MR. GIUFFRA: Let's take a break here.
22 (Recess.)

1 (Recess.)

2 BY MR. GIUFFRA:

3 Q Mr. Jackson, if I could take you back to
4 the meeting that was held in your office with
5 Mr. Coleman, which would be the third meeting you had
6 with counsel for Mr. Hale --

7 A Okay.

8 Q -- would it be fair to say you had what
9 might be described as plea negotiations at that
10 meeting, or was it a proffer?

11 A No, it wasn't a proffer. It was just -- we
12 discussed what I have said, the availability of a
13 misdemeanor, which I guess is one step up from
14 pretrial discussion, the problem that there are no
15 misdemeanors that would cover the situation, that it
16 would have to be a felony, and then we did discuss
17 the area of who Hale might have information of.

18 We both knew what we were talking about as
19 far as that area. But as far as getting down any
20 further than that, that's as far as it got.

21 Q You mentioned that Mr. Coleman indicated
22 that Mr. Hale might have information on Jim Guy

44

1 Tucker; is that correct?

2 A I think Coleman at one time told me I would
3 get Tucker.

4 Q You would get Tucker?

5 A Uh-huh, if I recall his language.

6 Q Did he say anything more about why you
7 would get Tucker?

8 A No. I mean, he didn't give me any
9 details. There was never what you would call a
10 proffer, an offer to make a proffer or any of the
11 rest of it, and I didn't indicate any willingness to
12 come off of a felony. So, in other words, that was
13 just a preliminary meeting, you might say.

14 Q And he said that you would be able to,
15 quote, unquote, "get Tucker," but he didn't provide
16 any more detail as to why you would be able to get
17 Tucker?

18 A No, but I had to assume that it had
19 something to do with those loans to Tucker.

20 Q And those were the loans that you had
21 obtained in connection with the search warrant that
22 you had executed on the 20th or 21st?

1 A Right. My sense of it is they indicted a
2 couple months ago, back in August of this year, is
3 what it must have been talking about.

4 Q Now, you previously testified he also said
5 something about how testimony or information Judge
6 Hale might have could, quote, unquote, possibly lead
7 to the Clintons?

8 A Yes. That was mentioned.

9 Q Can you amplify anything more about what he
10 said?

11 A No.

12 Q He just said it might lead to the Clintons?

13 A No. It was not in the same context of like
14 "get the Clintons." In other words, I was going to
15 get Tucker, but the Clintons were just thrown out
16 there as a word. There was nothing concrete said
17 with regard to them.

18 Q But he had indicated to you that they might
19 have some involvement with transactions involving
20 Judge Hale?

21 A That's what he indicated -- no, I don't
22 know if he was indicating that or if he was

46

1 indicating that McDougal may have told Hale something
2 or other, or if Hale had some independent information
3 or what. I just know that that was a name that we
4 talked about.

5 But hell, all this was in the newspapers,
6 the Whitewater stuff and all the rest of it,
7 McDougal. There was a connection between Hale and
8 McDougal, so you would assume that there is a
9 possibility of a connection through there, wouldn't
10 you? All we are talking about is stuff that is in
11 the newspaper.

12 Q You also discussed James McDougal at this
13 meeting with Mr. Coleman?

14 A Yes. I was convinced he could get
15 McDougal. There was no question that we already had
16 McDougal anyway. But Hale could have helped on the
17 transaction. But I'm not sure you needed Hale to do
18 McDougal at that point in time.

19 Q And it is your testimony you don't recall
20 him saying anything more about the Clintons?

21 A No. That was just mentioned. I'm not sure
22 if I mentioned it, the term "Whitewater." But this

1 was all just two people sitting around bantering back
2 and forth.

3 Q Was the discussion of Whitewater during
4 this meeting that you --

5 A That had all been in the newspapers.
6 McDougal was connected with Whitewater. So if you
7 connect Hale with McDougal, possibly you have a
8 connection over there.

9 MR. GIUFFRA: Let's just take a break
10 here.

11 (Discussion off the record.)

12 BY MR. GIUFFRA:

13 Q After this meeting with Mr. Coleman, did
14 you take any action?

15 A Take any action? What do you mean?

16 Q Did you speak to anyone in your office?

17 A No.

18 Q As of the time of this meeting with
19 Mr. Coleman, had you been speaking with anyone in
20 your office about the investigation that you were
21 conducting into Mr. Hale?

22 A No.

1 Q And was that a standard operating procedure
2 in the office, that you would sort of do your
3 investigation and not have to report back to anyone?

4 A I would have to think so. I don't know.
5 That's kind of the way I have always operated. I
6 don't ever bug management with something I don't need
7 to bother them with.

8 Q You indicated that --

9 A If we had reached a plea agreement, I would
10 have had to have gone to management. I would have
11 done this on my own hook, but we weren't at that
12 point.

13 Q How did you leave it with Mr. Coleman at
14 the conclusion of this meeting? Did you say you
15 would get back to him?

16 A No. We just more or less -- I guess he
17 went on back to his office and I went on back to
18 whatever I was doing. I assumed he would be back.
19 They always are.

20 Q You are a tough negotiator.

21 Ms. Casey became the U.S. Attorney, it is
22 your belief, sometime shortly thereafter?

1 A I think it was mid-August. I don't know
2 the exact date. But I would have to think it was
3 right at mid-August, would be my guess.

4 Q And then Mr. Johnson became the first
5 assistant; is that correct?

6 A At some point in there.

7 Q In that same mid-August period?

8 A Yes.

9 Q Then you previously testified that
10 Mr. Coleman then contacted Ms. Casey and Mr. Johnson
11 and had a meeting?

12 A Right. If you have The Wall Street
13 Journal, you should have letters detailing all of
14 those meetings.

15 Q Were you invited to attend these meetings
16 with Mr. Coleman, Ms. Casey and Mr. Johnson?

17 A I don't know if I was invited or if I said
18 I didn't care to. I was of a view all they were
19 trying to do was try to put things off, that this was
20 all a waste of time.

21 I don't remember if Michael discussed
22 whether I needed to go or not. He may have and I

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1 said I didn't care to go.

2 Q That's Michael Johnson?

3 A Right. I wasn't excluded. I wasn't told I
4 couldn't go, but I may have been told at least on one
5 occasion, but I probably would have indicated I
6 didn't care to go anyway.

7 Q Did you ever brief Michael Johnson about
8 where the investigation into Mr. Hale stood prior to
9 his meeting with Mr. Coleman?

10 A I don't think so. I had very little
11 conversation with him and none with Ms. Casey.

12 Q So it is your recollection you never
13 discussed Mr. Hale with Ms. Casey?

14 A It would have been something like out in
15 the hallway. It would have been very casual. I
16 never attended -- I don't think she was at but one
17 meeting I ever went to on any of this. That was with
18 the FBI.

19 I don't recall a whole lot of contact with
20 her. All my contact was with Johnson. It was strict
21 chain of command type thing.

22 Q And it would be your testimony that Coleman

1 met with Johnson and Casey sometime in --

2 A I don't know when they started. You would
3 have to get The Wall Street Journal and those letters
4 give you the sequence and the time frame. But it
5 would have been late August and early September,
6 continuing up to about the week before the grand
7 jury.

8 Q Do you know whether anyone else was present
9 at those meetings besides Mr. Coleman, Ms. Casey and
10 Mr. Johnson?

11 A No.

12 Q Do you know whether Ms. Casey attended all
13 the meetings with Mr. Coleman?

14 A I don't know.

15 Q Did either Ms. Casey or Mr. Johnson report
16 back to you as to what occurred at those meetings
17 with Mr. Coleman?

18 A I think Michael Johnson showed me the last
19 letter that he wrote to Randy Coleman before the
20 indictment.

21 Then he and Ms. Casey, I think, were gone
22 off to seminars, or somewhere or another the week of

1 the indictment. They were off somewhere at
2 meetings. And I'm inclined to think that Michael may
3 have shown me that last letter that he sent to
4 Randy.

5 Q Did you continue to conduct your
6 investigation into Mr. Hale and Capital Management
7 during the time when these discussions with
8 Mr. Coleman were going on with your supervisors?

9 A Yes. David Reign and I and Gretchen Hall,
10 we continued putting together and making sure we had
11 all of our ducks in a row.

12 Q Do you recall -- let's just take the period
13 between August and the time of the indictment. Did
14 you have any other conversations that you can recall
15 with Mr. Johnson?

16 MR. FISHMAN: Can you read that back.

17 BY MR. GIUFFRA:

18 Q Between August and September 23rd, do you
19 recall any other conversations that you had with
20 Mr. Johnson?

21 A At some point in there, I was making the
22 suggestion -- I don't know if that was before or

1 after -- that they bifurcate the case and that he or
2 someone else take the Madison Guaranty angle of it
3 and take Steve Irons and Gretchen Hall, and that I
4 would finish up David Hale with David Reign.

5 Q Did anything come of that suggestion?

6 A No.

7 Q Let me show you a document which bears
8 Bates number 7640.

9 (Exhibit 7640 identified.)

10 (Witness examined the document.)

11 THE WITNESS: I think basically a little
12 bit of this is correct. I told him I was not going
13 to come off the felony. But other than reading this
14 in The Wall Street Journal, I didn't see it at the
15 time.

16 MR. GIUFFRA: Why don't we take our recess
17 right now.

18 (Whereupon, at 1:05 p.m., the deposition
19 was recessed, to be reconvened at 2:00 p.m. this same
20 day.)
21
22

1 AFTERNOON SESSION (2:10 p.m.)

2 Whereupon,

3 EARL FLETCHER JACKSON

4 resumed the stand and, having been previously duly
5 sworn, was examined and testified further as follows:

6 EXAMINATION (Continued)

7 BY MR. GIUFFRA:

8 Q Again, directing your attention, sir, to
9 the September 15, 1993 letter to Ms. Casey. Did you
10 ever discuss this letter with Ms. Casey?

11 A No, I never did. It was in The Wall Street
12 Journal.

13 Q Do you recall when it was in The Wall
14 Street Journal?

15 A That was months later. Most of these would
16 have been -- I assume Mr. Johnson and Ms. Casey would
17 have handled these. All I know is I proceeded with
18 the indictment on September 23rd; in other words,
19 nobody told me not to.

20 Q Did anybody get back to you and say there
21 had been this meeting on -- strike that.

22 Let me show you another document. This is

1 7639, Department of Justice. This is a letter from
2 Paula Casey, dated September 16, to Mr. Coleman.

3 A Okay. The only time I would have seen this
4 would be later in The Wall Street Journal.

5 Q In this letter, there is discussion of plea
6 negotiations being at an impasse. Did you have any
7 discussions with Mr. Coleman about plea negotiations
8 being at an impasse, other than the meeting you had
9 with him, the third meeting you had with him?

10 A I didn't have any subsequent meetings with
11 Mr. Coleman until after the plea and arraignment,
12 when he came in to plead not guilty.

13 Q Did you have any discussion with Ms. Casey
14 about the plea negotiations?

15 A No.

16 Q Did you ever have any discussions with
17 Ms. Casey about the plea negotiations?

18 A As far as I know, no.

19 Q Did you have any discussions with
20 Mr. Johnson about the plea negotiations?

21 A I knew they were meeting. I'm inclined to
22 think he showed me the last letter, the one with his

1 signature. That was before he left town. It would
2 be up about close to the date of the grand jury.

3 Q Let me show you a document bearing Bates
4 number 1649.

5 A I'm inclined to think he showed me that
6 one; in other words, basically my instructions were
7 to go ahead and go to the grand jury.

8 Q This is a document dated September 20, 1993
9 to Mr. Coleman from Michael D. Johnson, First
10 Assistant Chief, Criminal Division, Eastern District
11 of Arkansas, United States Attorney's Office.

12 And it is your recollection that
13 Mr. Johnson indicated to you that you should proceed
14 with the presentation of the case to the grand jury?

15 A Yes. In other words, he showed me -- I'm
16 inclined to think that he showed me that letter, and
17 more or less, I was going to go ahead and proceed
18 with the next week or that week, maybe -- is that a
19 Monday?

20 Q I'm not sure.

21 A If that's the 20th, that could have been
22 the Monday before the grand jury starts on the 21st.

1 All I know is Mr. Johnson went on a trip somewhere
2 and Ms. Casey was off on a trip.

3 MR. FISHMAN: Off the record.

4 (Discussion off the record.)

5 BY MR. GIUFFRA:

6 Q You believe this was probably a Monday?

7 A If the date is correct, that being the
8 20th, that would be the Monday before the grand jury
9 the next day.

10 Q Do you have any recollection of anything
11 more Mr. Johnson would have said to you about the
12 plea negotiations, other than just go forward and
13 present the case to the grand jury?

14 A No. I mean --

15 Q Did he --

16 A -- I already indicated I never was quite
17 sure that Coleman was after anything but time.

18 Q Did Mr. Johnson indicate to you anything
19 about the sorts of information that Mr. Hale would be
20 able to provide?

21 A No. I think at that point in time I knew
22 they were meeting with Coleman, and I think the only

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1 other discussion was that one I was telling you
2 about, to bifurcate the case. I would go ahead and
3 finish up what I started and somebody else would take
4 over there. Basically I was inviting Mr. Johnson to
5 take the mess over.

6 Q Let me sort of backtrack a bit. We have
7 been spending our time so far talking about the David
8 Hale matter. Did there come a time when you were
9 made aware of a criminal referral from the Resolution
10 Trust Corporation regarding Madison Guaranty
11 Savings & Loan Association?

12 A Yes. Are you talking about the one
13 involving the check kite?

14 Q Yes. Let me show you a document --

15 A Would it be October of '92 or September?
16 What is the date on it?

17 Q September 1. This is a document bearing
18 Bates number 664. It is a letter to the Honorable --
19 it is actually '92.

20 MR. FISHMAN: That's what he said.

21 BY MR. GIUFFRA:

22 Q Charles Banks from Richard Iorio.

1 (Witness examined the document.)

2 A Yes. I spent a morning in October of '92
3 reading this back through about three or four times.

4 Q Was this criminal referral provided to you?

5 A Yes.

6 Q Do you know why it was provided to you for
7 review?

8 A I assume Mr. Banks must have not been too
9 upset with me on First South, so he gave me that one
10 to review.

11 Q Was First South also an RTC criminal
12 referral?

13 A No, that was before RTC. That came out of
14 the Federal Home Loan Bank Board.

15 Q But it was also a case involving an S&L?

16 A Yes.

17 Q So he believed you to have experience
18 investigating matters involving savings and loans?

19 A Yes, I assume. I was given it to look to
20 see if there were any statute of limitations problems
21 and what I thought.

22 Q Did you take any action after reviewing

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1 this criminal referral?

2 A I went back and sat down with Mr. Banks and
3 we discussed it.

4 Q What do you recall about your discussions
5 with Mr. Banks?

6 A I told him there wouldn't be a statute of
7 limitations problem because of the FIRREA, where they
8 extended the statute for 10 years from that date, it
9 would be August, I think, of '84 forward. Where you
10 would have statute of limitation problems is when you
11 got up to '94. So statute of limitations was no
12 problem.

13 What I indicated was it was an in-house
14 check kite, that you would have to do more work on
15 it, you would have to get the records and take the
16 kite forward to see if they wound up with an
17 overdraft in one of these accounts; in other words,
18 if you had a loss other than just loss of interest.
19 And the main thing I was telling him is I wouldn't
20 want to do it because of the acquittal, his prior
21 acquittal.

22 Q This is Jim McDougal's prior acquittal?

1 A Yes. That would sink you.

2 Q You were concerned about a possible double
3 jeopardy problem?

4 A No. When McDougal got acquitted in the
5 first case, he was not a very gracious winner. He
6 proceeded to give an interview to the newspapers
7 which said this was all a witch hunt, that the reason
8 he was prosecuted was that Congressman Hammersmith,
9 who he had run against, who he, McDougal, had run
10 against, had put Chuck Banks in to be U.S. Attorney
11 for no other purpose than to get Jim McDougal. And
12 he blasted the dickens out of the U.S. Attorney's
13 Office.

14 If you didn't have a case that you were
15 absolutely sure of winning, you were going to get
16 whammed again, and also you were going to have a sour
17 grapes problem. In other words, they were going to
18 use that first acquittal that this was sour grapes,
19 that we were going after him again.

20 The guy was down, what, living in a trailer
21 down in Arkadelphia, diagnosed manic-depressive, on
22 Social Security disability. He lost his wife and the

1 whole works. So the chances were for an acquittal.

2 Q Did Mr. Banks indicate that he agreed with
3 your analysis?

4 A He didn't say. He listened. But I saw in
5 the paper a couple weeks ago, there was a letter
6 which more or less, he is saying the same thing in
7 his letter that I told him. So I assume he agreed
8 with it, but basically, it was Fletcher doing the
9 talking.

10 Q Did you discuss with Mr. Banks the fact
11 that Jim Guy Tucker was mentioned in this referral?

12 A I think he had already skimmed it himself.
13 You had the names -- you have Jim Guy's accounts
14 there. There was the Whitewater account, wasn't that
15 there, that would involve the Clintons.

16 Ms. Lewis listed all of these people who
17 were involved in the account. So I would have
18 assumed he would have known who-all would have
19 been -- their names are in there, aren't they?

20 Q Let me give you a copy of the referral to
21 refresh your recollection.

22 A There is a place where she has material

1 witnesses. Do you know where that is? Or what she
2 perceived as material witnesses.

3 MR. GIUFFRA: Let's go off the record a
4 second.

5 (Discussion off the record.)

6 THE WITNESS: She has Tucker. She has
7 Clinton. She has Stephen Smith. She has Senator
8 Fulbright and Greg Young. Then she has Kirby
9 Randolph or R.D. Randolph, whatever the hell his name
10 is. It is R.D. Kirby was the wife of R.D.

11 I'm not sure who these last two are -- oh,
12 I know who it is. Charles James is the one who did
13 the tax returns for Whitewater and the other things.

14 BY MR. GIUFFRA:

15 Q Did you discuss with Mr. Banks the fact
16 that Bill and Hillary Clinton were mentioned as
17 witnesses in this criminal referral?

18 A It would just have been in passing. The
19 main discussion was that prior acquittal.

20 Q Did Mr. Banks indicate to you how he
21 believed the referral should be handled within your
22 office?

1 A No. He asked me to review it. I spent the
2 better part of a morning reviewing it. I went back
3 and told him what I thought, and that was the end of
4 the conversation.

5 Q Was there any discussion of the fact that
6 the Presidential campaign was then in progress and
7 that any special steps should be taken in order to,
8 for example, maintain the confidentiality of the
9 referral?

10 A No, I don't remember any discussions about
11 that at all.

12 Q After your conversation with Mr. Banks, did
13 you speak with anyone else in your office about this
14 referral?

15 A At a later point in time, I was curious,
16 and I asked Mac Dodson what had happened to it. He
17 said it had gone up to the department.

18 Q That's the Justice Department, main Justice
19 in Washington?

20 A Yes.

21 Q Who was Mac Dodson?

22 A He was the first assistant, chief of the

1 criminal division under Banks.

2 Q Did he indicate to you why this referral
3 had been sent to main Justice?

4 A I am thinking. I'm not 100 percent sure of
5 this, but I think he had gone to a seminar where they
6 had said all such referrals involving people of any
7 prominence should be sent up there or something.
8 There was some reason, something he heard at a
9 seminar, which indicated it should be sent up there.

10 Q Do you know when the referral was sent to
11 main Justice?

12 A No.

13 Q Within your office, the Eastern District of
14 Arkansas, were you the assistant who had been
15 assigned to handle this referral relating to Madison
16 Guaranty?

17 MR. FISHMAN: You mean did he get this one
18 or all such matters?

19 MR. GIUFFRA: Let's ask the first
20 question.

21 BY MR. GIUFFRA:

22 Q Did you receive all RTC criminal

1 referrals?

2 A No.

3 Q Were you assigned this particular referral
4 involving Madison Guaranty?

5 A No. I guess that's why I asked the
6 question. I was trying to find out what had happened
7 to it, because somebody else -- professional
8 jealousy, you are trying to find out what other kid
9 on the block got the case.

10 Q It was not clear to you you were even
11 assigned this referral when you reviewed it?

12 A As far as I know, I was not officially
13 assigned to it.

14 Q Do you know whether anyone else in your
15 office was assigned to handle this referral?

16 A No.

17 Q Did Mr. Dodson say anything more to you
18 about what had happened to this referral other than
19 the fact that it had been sent to main Justice?

20 A No. I assumed that was where it was and
21 that I wouldn't have to worry about it.

22 Q Did you ever discuss --

1 A Basically what I am telling you is I didn't
2 think it could be won.

3 Q And again, why was that?

4 A Because you have that first acquittal.

5 Q Did you believe there was a basis for doing
6 further investigation with regard to transactions
7 involving Whitewater Development Corporation?

8 MR. FISHMAN: Do you mean would it have
9 been legally permissible, or whether he thought it
10 was appropriate?

11 BY MR. GIUFFRA:

12 Q Did you think it would have been
13 appropriate?

14 A If you were going to proceed with the case,
15 the answer is yes, you would have run the kite out to
16 then. What I am talking about is jury appeal. If
17 you were going to have a jury nullification problem,
18 you wouldn't want to spend the resources to run
19 something out that you didn't think would trot.

20 Q But in order to investigate the matters
21 that were set forth in the referral, you would go and
22 examine the transactions involving Whitewater?

1 A What you would need would be the bank
2 records. You would need to run the account records
3 on out into, I guess '86 or whenever it stopped. You
4 wouldn't need to go talk to Tucker or Clinton or any
5 of the rest of them. All you would need is the bank
6 records and somebody who can sit patiently and
7 schedule the items out.

8 In other words, you need a summary witness
9 and the bank records would be all you would need if
10 you were going to do it. It is just a standard check
11 kite. The only difference is it is within-house,
12 instead of between different institutions.

13 But you wouldn't need live witnesses.

14 Q Would you also follow the kite out to see
15 whether checks were payable to the Bill Clinton
16 gubernatorial campaign?

17 A There is no indication from that that you
18 would run into that, is there? Now, there is another
19 referral which would get you into that, but that is
20 one of the nine later on. But I don't think --
21 unless my memory is bad, I don't think there is
22 anything in that referral there that would lead you

1 into that one.

2 Basically all it was was McDougal was
3 overextended on debt. He was doing his debt carry by
4 doing all of these maneuvers and manipulations; no
5 more, no less.

6 Q In the course of investigating McDougal,
7 would you want to see whether any of his business
8 partners were aware of his check kiting activities?

9 A I don't know that that would have anything
10 of any significance. You would probably want to know
11 why he was needing the money. But then I think that
12 would be easy, because all you would have to do is
13 take his checks and see where it was going. But I
14 don't know that you would need to contact a bunch of
15 people. It would be a records case, pure and
16 simple.

17 Q But in conducting your investigation, if
18 you came upon the fact that other people who were
19 beneficiaries of the check kiting activity knew about
20 it, what would you do?

21 A Then you would consider whether or not they
22 would need to be in there. But you are not going to

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1 run across that because they are going to say they
2 didn't know and McDougal is not going to say they
3 knew.

4 You would never run across that prospect.
5 I mean from appearances, it is just McDougal taking
6 care of McDougal and McDougal's corporations.

7 Q What about if McDougal told you, in the
8 course of your investigation, that the attorneys
9 wanted to provide you with information that some of
10 the other people who were beneficiaries --

11 A Then you would have a one-on-one swearing
12 match, and McDougal's credibility is about in the
13 same ballpark as David Hale's. You wouldn't want to
14 jump out with that one.

15 Q Did you ever discuss this referral with
16 anyone from the RTC?

17 A At some point around -- I don't know if we
18 are talking -- sometime in August or very early
19 September, I told Jean Lewis it would have helped
20 what I was working on had they taken the matter
21 further. She did it backwards.

22 Usually on a kite, you take the overdraft

1 at the end of it where the person is who gets stung
2 and work backwards. She started somewhere, I think
3 the newspapers I read that she -- she read The New
4 York Times articles and started looking at the
5 Whitewater account or something. She started kind of
6 in the middle or somewhere.

7 She didn't start at the end of the kite. I
8 told her it would have helped us had she been on the
9 tail end of the kite.

10 If what she -- if her schedules -- I had
11 her schedules and exhibits out where I was working.
12 If we had had those up into '86, it would have helped
13 clarify some questions like in Master Marketing,
14 where that 300,000 came from. It went into
15 McDougal's account.

16 If she had taken this thing forward into
17 '86, it would have helped what I was working on.

18 Q Did you contact Ms. Lewis or did she
19 contact you?

20 A We had a series of telephone
21 conversations.

22 Q Do you remember who started the

1 conversations?

2 A Steve Irons referred her to me. She was
3 wanting to know the question about is it illegal for
4 an Arkansas state chartered savings and loan to make
5 a political campaign contribution. I went upstairs
6 and looked in the statutes and couldn't find it. So
7 I referred her to the state security commission to
8 see if they had any rules and regulations, like the
9 federal does, that might answer the question.

10 But we had a series of --

11 Q Do you recall roughly when you had this
12 conversation with Ms. Lewis?

13 A I didn't have any conversations with
14 anybody outside of the bureau until after the search
15 warrant, so it has to be after the search warrant.
16 And I'm assuming it would be -- I could be wrong on
17 this. Irons may have had her call me earlier. This
18 may have been back earlier in July. She and Irons
19 had a bunch of conversations.

20 MR. FISHMAN: To clarify, you mean July of
21 1993?

22 THE WITNESS: Yes.

1 That's the only discussion I ever had with
2 that referral with anybody in RTC. The extent of it
3 was it would have been more helpful if she had been
4 over '86.

5 BY MR. GIUFFRA:

6 Q It would be your testimony that you had the
7 one conversation with Banks sometime in September '92
8 when the referral first came into the office?

9 A I think it was more like in October.

10 Q October '92, roughly when it came in
11 September, so sometime in that initial period?

12 A I would think it was more like October than
13 it was September. I really can't remember, though.
14 It could have been September.

15 Q And then after that, the next
16 communications you had with anyone about this
17 particular referral was when you spoke to Mr. Irons
18 sometime in '93?

19 A No. The next conversation was when I asked
20 Mac Dodson what had happened to it. That was just
21 in-house curiosity.

22 Q That was about what time?

1 A That would have been about a month or two
2 after I had first seen it.

3 Q So sometime toward December of '92?

4 A Yes. I would say that that's right.

5 Q Then the next conversation you would have
6 had would have been with Irons sometime in the middle
7 of '93?

8 A I think when I first went out there to work
9 on Hale, they started handing me all this stuff on
10 Madison, too, because Hale relates to Madison. They
11 may have mentioned the first referral. I may have
12 told them that I had read it. But that was just in
13 passing.

14 Q Would this be the SBA was giving you stuff?

15 A No. Whenever I went out -- the bureau --
16 we not only opened up Hale, we started looking back
17 at Madison because Hale had a bunch of transactions
18 at Madison involving McDougal. You had cross lending
19 here.

20 So if you get into Hale, you get into
21 McDougal. There was a girl out there by the name of
22 Gretchen Hall. She collated all this stuff. She

1 pulled all the stuff on every investigation that
2 Hale's name had come up.

3 Q She was with the FBI?

4 A She is a financial analyst. She is the one
5 who pulled all of the stuff together where Hale had
6 ever come up. Hale had come up big time in the
7 earlier Madison investigation.

8 Q Do you recall what agency she worked for?

9 A She is with the FBI. She is a financial
10 analyst.

11 Q Let me show you a document. This is bears
12 FBI 1547, 1549. It is a memo from Agent Irons to the
13 agent in charge of Little Rock, I believe.

14 (Exhibit 1547-1549 identified.)

15 (Witness examined the document.)

16 THE WITNESS: Okay. That transaction was
17 tracing the money out of -- taking the Hale money,
18 the Master Marketing money and trying to find out
19 what the McDougals were doing with it. That's what
20 you are interested in. She is a little bit wrong on
21 some of this.

22 (Witness examined the document.)

1 THE WITNESS: This is that stupid Irons.

2 BY MR. GIUFFRA:

3 Q Excuse me, sir?

4 A That's Irons.

5 Q Does this refresh your recollection in any
6 way about what happened with regard to Ms. Lewis?

7 A Basically I called Ms. Lewis and told her
8 that I wanted her to trace the money. I didn't tell
9 her that we didn't want the fiche and film.

10 Q You did want the fiche --

11 A Yes. She has that much of it wrong. What
12 I was going to do was to take the \$300,000 that went
13 into McDougal's account, that went into his account,
14 and trace it to what its application was.

15 Q The 300,000?

16 A Yes. We also had a subpoena up there for
17 fiche --

18 MR. FISHMAN: Before you get into what was
19 subpoenaed, I want to just stop and again raise the
20 cautionary flag that we should not be -- Mr. Jackson
21 should not be discussing what was subpoenaed beyond
22 categories of microfiche and microfilm.

1 I don't think I will get a quarrel from the
2 committee staff that the contents of the grand jury
3 subpoena is covered by Rule 6(e).

4 MR. COLE: Could I ask one clarifying
5 question? Perhaps because I wasn't listening closely
6 enough.

7 MR. GIUFFRA: Yes.

8 BY MR. COLE:

9 Q When you are talking about the request you
10 made, Mr. Jackson, the \$300,000 loan trace, was that
11 a request you made to Ms. Hall or to Ms. Lewis?
12 Because this memorandum that Mr. Giuffra has shown
13 you, I read that to indicate Ms. Lewis was doing that
14 work. I am confused as to who is doing it.

15 (Witness examined the document.)

16 MR. FISHMAN: Can you read that back.

17 MR. COLE: Let me ask it again.

18 EXAMINATION

19 BY MR. COLE:

20 Q The request you made to have the \$300,000
21 loan proceeds traced, was that a request you made to
22 Ms. Hall or Ms. Lewis at the RTC?

1 A Ms. Lewis at the RTC. See, we hadn't
2 gotten the fiche and film. They had not recopied
3 it. They only had one copy of it. At a later point
4 their attorney told us they were going to copy it and
5 send us a copy. I definitely didn't tell her we
6 wouldn't need it.

7 Q Do you recall when you made that request of
8 Ms. Lewis?

9 A I took Ms. Hall with me. We went down to
10 Dallas, went to the OTS, Office of Thrift
11 Supervision, and went to the FBI, who had had all
12 these documents in prior years, but some were gone.
13 We went back through the files down there and I found
14 the McDougals' bank account. In the bank account, I
15 saw the \$300,000 going into the McDougals' personal
16 account. So they still had the fiche and film up in
17 Kansas City.

18 So I called Mrs. Lewis and asked her would
19 they trace the \$300,000. I told her what account it
20 had gone into. I was needing to know what McDougal
21 had done with the money.

22 Q Use of the proceeds?

A Yes.

Q You had become aware of the \$300,000 loan through your prior investigation of Mr. Hale?

A Yes.

MR. COLE: Thank you.

THE WITNESS: See, Irons got mad.

MR. GIUFFRA: Go ahead.

MR. FISHMAN: There wasn't a question pending.

EXAMINATION

BY MR. GIUFFRA:

Q After reviewing this memorandum, does this accurately state your recollection as to what happened with regard to your interaction with Ms. Lewis and Mr. Irons?

A My relationship with Mr. Irons just went to hell in about September 19, what we called black Friday.

Q He had been someone you had worked with closely previously?

A No, he was the FBI supervisor there.

Q In Little Rock?

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A Yes.

Q He was the senior person in Little Rock?

A Yes.

MR. FISHMAN: You say the senior person?

THE WITNESS: He was the senior person, the head of the white collar squad.

BY MR. GIUFFRA:

Q Why did your relationship with Mr. Irons, quote, unquote, go to hell?

MR. FISHMAN: Again, I'm going to ask that the answer to the question may involve grand jury matters to a certain extent. To the extent that it does, I want to remind Mr. Jackson that there may be --

(Witness conferred with counsel.)

THE WITNESS: It was a dispute over what subpoenas were to be issued and -- can we go off the record?

(Counsel conferred with the witness.)

THE WITNESS: The next item was I was declining to go along with Irons to say that I would hold the RTC in contempt for failure to comply with

1 the subpoenas. Basically what I was telling him was
2 I was not going to get involved in a turf battle
3 between the FBI and the RTC, and it made him mad.

4 BY MR. GIUFFRA:

5 Q Your view, you were having a problem
6 obtaining the film and the fiche from the RTC?

7 A No, I wasn't having problems. There was
8 going to be a little bit of a delay in getting it,
9 which didn't bother me but apparently bothered him.

10 Q Did he indicate why it bothered him that
11 there was a delay in obtaining the fiche and the
12 film?

13 MR. FISHMAN: You are asking for what Irons
14 said?

15 MR. GIUFFRA: Yes.

16 THE WITNESS: I don't know. It would have
17 to be an assumption. I guess he thought RTC was
18 dragging their feet.

19 BY MR. GIUFFRA:

20 Q Did Agent Irons indicate to you he believed
21 this was an investigation that might lead possibly to
22 an indictment and conviction of someone?

1 Strike the question. It is a bad
2 question. Strike the question.

3 A We had ceased to communicate.

4 Q Prior to September 19, is it?

5 A September 19.

6 Q Prior to September 19 --

7 A It couldn't be the 19th -- it would be the
8 Friday before the 20th.

9 Q Did he indicate to you that he thought
10 there were matters that needed to be investigated in
11 connection with the Madison Guaranty? Did he believe
12 there were matters that needed to be investigated?

13 A We all thought there were. That wasn't the
14 issue.

15 Q What were some of the matters you believe
16 needed to be investigated with regard to Madison
17 Guaranty?

18 MR. FISHMAN: Again, I have to object to
19 what Mr. Jackson thought should be investigated. I
20 understood you before to say you were limiting your
21 inquiry to things that happened as opposed to the
22 thought processes of Mr. Jackson.

BY MR. GIUFFRA:

Q What matters were being investigated in the September '93 time period with regard to Madison Guaranty?

MR. FISHMAN: Off the record.

(Discussion off the record.)

BY MR. GIUFFRA:

Q At this time in September 1993, what matters set forth in --

A If you look at the indictment that Mr. Starr came out with in August of this year, you will see it, the transactions in Dean Paul, Limited, Casa Grande, those items.

Q And also the Master Marketing transaction?

A That was part of Hale, but it is also part of Dean Paul. It is kind of in both areas.

Q That was also under investigation?

A Yes, as it relates to Dean Paul, Limited.

MR. GIUFFRA: Off the record.

(Discussion off the record.)

BY MR. GIUFFRA:

Q Just to clarify something, in December of

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'92, you asked the first assistant where the RTC Madison referral stood?

A Yes.

Q What did he say to you, again?

A It had gone to Washington.

Q When did you start doing work in connection with that referral again?

A I never did really get back into it. I took the exhibits out there. But you were going to have to get the fiche and film from the RTC before you could take the kite in, so it just sat.

Q Do you recall roughly when that was that you started to take some investigatory status with regard to Madison?

A With regard to Madison?

Q Yes.

A It was early. Dean Paul, Limited popped up as something to look at probably by the end of July.

MR. FISHMAN: Off the record.

(Discussion off the record.)

BY MR. GIUFFRA:

Q With regard to Madison Guaranty, when did

1 you first begin to do an investigation of anything
2 relating to Madison Guaranty?

3 A When I saw the Dean Paul, Limited
4 transaction.

5 Q When was that?

6 A I'm guessing probably around sometime in
7 July of '93.

8 Q How did you come upon the Dean Paul,
9 Limited transaction?

10 A From the prior investigation that the FBI
11 had done.

12 Q What was the matter that the FBI had
13 investigated that caused you to come upon the Dean
14 Paul transaction?

15 A Because they had enough information in
16 there to look like it might turn into something, that
17 it looked like what it was going to be was money
18 going out of McDougal's institution over to Hale and
19 then back to McDougal.

20 Q Was Dean Paul part of the SBA referral?

21 A Yep.

22 Q So now I understand.

1 A I was coming at it from a different
2 perspective than they had been at it prior. I was
3 coming -- I was backdooring in from Hale as opposed
4 to looking at it from McDougal.

5 EXAMINATION

6 BY MR. COLE:

7 Q And the FBI was looking at it from what
8 perspective?

9 A I'm talking about the earlier savings and
10 loan case. That focused on McDougal.

11 Q The case that resulted in Mr. McDougal's
12 acquittal?

13 A No.

14 Q This is what you referred to as reopening?

15 A We were backdooring out of Hale back into
16 Madison and eventually reopened at some point in time
17 a savings and loan case, what the FBI calls the 39
18 case, off of the Dean Paul, Limited transaction.

19 Q Which was an outgrowth of the SBA IG
20 criminal referral on Mr. Hale?

21 A Yes.

22 EXAMINATION

BY MR. GIUFFRA:

Q When would that have been --

A It was a spin-off.

Q When was that that you began what you described as the FBI 39 case involving Madison?

A I am guessing -- you would have to get access to their files. But I think David Reign, I sat down with him and we outlined the Dean Paul transactions and Irons opened it as a 39 case, and I am saying this was in August or early September.

Q Of '93?

A Yes. But it has nothing to do with the referral that you showed me earlier, the one that I reviewed back in October of '92.

Q This was an investigation that grew out of the SBA referral?

A Right.

Q It was done independently by the FBI in Little Rock?

A Uh-huh.

Q And yourself?

A Yes. That's what the problem is with that

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memo.

Q The separate investigation relating to Madison that you were conducting -- just strike that. Let's go off the record.

(Discussion off the record.)

BY MR. GIUFFRA:

Q In investigating Mr. Hale, you were working cooperatively with the FBI?

A Yes.

Q And in connection with investigating Mr. Hale, you came upon the Dean Paul transaction?

A Yes.

Q And then you followed the investigative leads and that led you to the Madison transactions?

A Yes.

Q And that would be a normal process by which you would conduct an investigation, you would keep following the investigative trails looking for wrongdoing?

A Yes.

Q And it would all be part of one investigation?

1 A Yes.

2 Q And you were the assistant U.S. Attorney in
3 the Eastern District of Arkansas that was in charge
4 of this investigation?

5 A Yes.

6 Q How many other matters were you working on
7 at this time? This would be September '93.

8 A I had some civil cases and I had one major
9 criminal case that got shut down, whenever they
10 pulled all the agents off; whenever Fiske came in,
11 they pulled the agents off over into the Whitewater
12 thing. So they shut down a bunch of the older
13 cases.

14 Q This would have been in 1994, after
15 January?

16 A Yes. That was the cases that had been on
17 the back burner. That's because there were no
18 agents.

19 Q As of September 1993, your primary criminal
20 case was this Hale/Madison investigation?

21 A Yes. Almost exclusively.

22 Q So would you estimate what percentage of

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1 your time were you spending on this?

2 A All, just about.

3 Q Were you discussing the progress of this
4 investigation with anyone in the U.S. Attorney's
5 Office?

6 A This was all supposed to be kept quiet.

7 Q Why was the investigation supposed to be
8 kept quiet?

9 A Because the FBI wanted it that way.

10 Q Did the FBI indicate to you why they wanted
11 to keep the investigation quiet?

12 A I guess because of the names that were
13 involved, for one thing.

14 Q What names were those that they wanted to
15 keep quiet?

16 A I mean, you wouldn't want to be leaving FBI
17 302s out on the thing that refers to Whitewater
18 something. I would assume because of all of the big
19 names involved in the item, they didn't want me
20 standing out in bars, like I sometimes do, running my
21 mouth about what I had been doing for a living that
22 day. They definitely wanted the matter kept quiet.

1 There were only four people at the FBI
2 who -- no, three people. There were only four people
3 who were in on this thing for a long time.

4 Q What were the names of those people?

5 A Irons, Reign, Gretchen Hall and me.

6 Basically we didn't go around discussing what was
7 going on.

8 Q Did you discuss what was the progress of
9 your investigation of Madison with Mr. Johnson?

10 A No. He just assumed I was working.

11 Q You have indicated previously in your
12 testimony the publicity surrounding Whitewater. Did
13 you have an opportunity to read any news reports
14 about Whitewater during the 1992 Presidential
15 campaign?

16 A Yes. They followed Jennifer flowers. See,
17 the Arkansas Democrat picks up articles from the New
18 York Times and also the Washington Post and a few
19 others and The Times here and so forth. They ran all
20 of those articles. They were run in The New York
21 Times. So I had read all that stuff.

22 Plus I knew a little bit about the Madison

1 Guaranty case. Plus I knew about everybody involved
2 in all of this mess. This was like old home week.
3 Of course I read it. We are a small place.

4 Q Did there come a time when you discussed
5 the Madison investigation with Ms. Casey?

6 A No.

7 Q So you never discussed the Madison
8 investigation with Ms. Casey?

9 A I don't recall -- other than maybe in a
10 hall conversation, I think one time out in the hall
11 she said something like you have the most interesting
12 cases or something, which was that other case I was
13 talking about, plus this one.

14 But I don't recall -- I don't think I was
15 ever in her office on this matter. She sat in --
16 after I had the problem with Irons, they had a
17 meeting with regard to subpoenas which
18 representatives from the FBI, me, Ms. Casey and
19 Mr. Johnson sat in. She attended that, but I don't
20 recall her saying much.

21 I think that is the only meeting that I was
22 ever at that she was at. I went strictly chain of

1 command.

2 Q Mr. Jack, let me just turn your attention
3 to this document bearing Bates number FBI 1547 and
4 turn your attention to the page FBI 1548 and to the
5 sentence which -- this is a document from Mr. Irons
6 to his supervisor.

7 A Okay.

8 Q "Rider asked Jackson why he would do such a
9 thing in light of the numerous conversations with him
10 and his superiors about publicity which could
11 unfairly indicate a possible investigation of the
12 Clintons as related to Whitewater. Jackson advised
13 the bureau had noted a full investigation of
14 Whitewater Development Corporation would be necessary
15 in a meeting with himself, Johnson and Paula Casey.
16 He was reminded the subject matter of the meeting was
17 obtaining all the" and it is blanked out.

18 A That's the meeting I'm telling you about.
19 That's the one that she attended. But Irons was very
20 put out with me.

21 Q Do you recall when this meeting was?

22 A It would be right after the Hale

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1 indictment, late September, with regard to what we
2 are talking about, what subpoenas I would and
3 wouldn't issue.

4 Q So you were discussing what subpoenas you
5 would and wouldn't issue?

6 A Yes.

7 Q With Ms. Casey?

8 A No. She was sitting there listening to
9 it. Basically the dialogue was between me and
10 Gretchen Hall and Steve Irons with Michael Johnson
11 and Ms. Casey there as referee is what the situation
12 was.

13 You had Fletcher on one side of the table
14 against the FBI on the other, over what to do, and
15 they were more or less there trying to keep peace in
16 the family. Hell, the problem may be down here where
17 she is saying right here --

18 (Witness examined the document.)

19 "Ms. Casey again indicates she had come to
20 recognize his quirks." In other words --

21 Q That's your quirks?

22 A My quirks. But we were a complete -- I

don't know. You can stop if you want to.

MR. FISHMAN: Before you -- if you are indicating this is something that may be inappropriate that you are about to answer, let's go off the record.

(Witness conferred with counsel.)

THE WITNESS: Basically the loggerhead thing was they were asking me to subpoena records that we already had that they had never sat down and looked at.

BY MR. GIUFFRA:

Q Whose records -- now we are getting -- they wanted to subpoena records and you didn't want to subpoena the records --

A I didn't see we needed them. I didn't think we needed them. From what I saw of that indictment that came out in August of this year, I'm pretty sure you wouldn't have needed them. But she sat in on that meeting.

But they were more or less there as peacemakers between me, I guess, and the FBI, or at least one person in the FBI. But nothing got

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resolved at that meeting.

Q Was there any concern with regard to any subpoenas you had issued?

MR. FISHMAN: Again, without going into their contents or their identity.

THE WITNESS: Okay. Johnson, when I wouldn't issue the subpoenas, they were under the impression that Michael Johnson would issue the subpoenas that they wanted.

There was another meeting which was Michael Johnson -- for some reason I was invited. I guess I was still on the case so I was invited to attend, and the FBI, and Michael was asking them to detail certain items which gave them the impression that he wasn't going to do it either.

Somewhere along the line, they found out that I had issued a subpoena that they didn't like. I issued a bunch of banks subpoenas and a bunch of subpoenas to everywhere in the world, but I issued one to an individual that made them mad.

Now, why, I don't know.

MR. GIUFFRA: Can we go off the record.

1 (Discussion off the record.)

2 THE WITNESS: The individual that I
3 subpoenaed, had he made it public, this subpoena
4 would have wound up in the New York Times or
5 somewhere in the newspaper. That seemed to upset
6 him.

7 In retrospect, I probably shouldn't have
8 issued the subpoena.

9 BY MR. GIUFFRA:

10 Q The concern was to maintain the covert
11 nature of the investigation?

12 A Right. But I would have to say that that
13 subpoena was probably not well advised on my part.

14 BY MR. COLE:

15 Q When Mr. Giuffra said "the covert nature of
16 the investigation" and you said yes, were you
17 referring to the investigation of Mr. Hale and
18 Capital Management?

19 A This all relates. We were trying to keep a
20 lid on the whole thing. We didn't want to happen
21 what did happen at that point in time; in other
22 words, we didn't want to be in the newspapers. But

1 that was I guess, what do you call it, pipe dreams,
2 because Hale went public with the indictment and it
3 all went down from there.

4 BY MR. GIUFFRA:

5 Q About how long was this meeting between
6 Irons, yourself, Ms. Casey and Mr. Johnson?

7 A 30 minutes at best, or 20 minutes.

8 Q Do you recall where the meeting was held?

9 A At the U.S. Attorney's Office.

10 Q In Ms. Casey's office?

11 A No, in a conference room.

12 Q Did you provide an update on where the
13 investigation stood?

14 A All it was was a discussion of subpoenas.
15 I gave them a list of what we thought we would need
16 to subpoena, and they were making an argument of a
17 different type of subpoena.

18 Q Was there any discussion at this meeting of
19 Bill or Hillary Clinton?

20 A No.

21 Q Was there any discussion in this meeting of
22 Jim Guy Tucker?

A No, but I think I had the Castle Sewer and some other items, his loan files listed on my list. But the names didn't come up, I don't think. It was just what documents to get is all it was about.

Q This is the only meeting you can recall at which you in any way discussed the Madison-Hale investigation?

A Or where she was around where I was.

Q Where she was present.

Did there ever come a time where you and Ms. Casey spoke to anyone from main Justice about the Hale-Madison investigation, describing it generically?

A The only discussion I ever had with main Justice was somebody called down one day and I think the name is McKinney or Kinney.

Q John Keeney?

A He had called Michael Johnson, and Michael was gone. They had lost their copy of the proposed Hale indictment. I made a copy of it and gave it to Michael Johnson's secretary, and she faxed it to up here, to main Justice. That's the only contact I had

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with the Department of Justice before Mr. Mackay came in.

Q Would it be your testimony you don't recall being a participant on a conference call with Ms. Casey, Mr. Johnson or Mr. Keeney?

A No. As far as I know, that is the only time I talked to anybody before it was taken over.

Q Let me show you another document. This bears Bates number DOJ 17493. This is a letter dated September 20, 1993, from Randy Coleman to Michael Johnson.

A I'm assuming -- this must have been the one that Michael was responding to now.

I don't know if he handed me that one when he handed me that other one or not. I thought this was hilarious. That damn meeting -- excuse my language.

He had been out talking to the newspaper people. He had gone public with the prospect of his indictment the week before this, with I guess Mr. Gerth and with the reporters from the papers. He is talking about doing an undercover operation, and

1 Hale had been out talking to all of the -- I think I
2 first picked up on that when that was in the -- I
3 think I first saw that particular letter in The Wall
4 Street Journal.

5 But I'm assuming --

6 Q That's the reply?

7 A This must have been the reply. I think
8 this is the one Michael showed me before he left
9 town.

10 Q This bears Bates number 16479. That is to
11 Randy Coleman from Michael Johnson, dated September
12 20, 1993.

13 A Yes. I basically took this from Michael
14 Johnson to go ahead and go, go ahead and present it.

15 Q So, between early August 1993 and September
16 20, 1993, which would be the date of this letter, you
17 really didn't have any -- you did not have any
18 further conversations with Mr. Coleman?

19 A Not until the plea and arraignment. We met
20 over there when he pled not guilty. Then we had
21 discovery matters.

22 Q So insofar as you were aware, the plea

1 negotiations were being handled by Mr. Johnson and
2 Ms. Casey?

3 A Right.

4 Q And you were not present during any of
5 those meetings at which possible plea negotiations
6 were occurring?

7 A No. I didn't go. I may have been invited
8 at least to one of them, but I never did go.

9 Q Do you have any understanding as to how
10 many meetings occurred between Mr. Coleman, Ms. Casey
11 and Mr. Johnson with regard to a possible plea
12 agreement?

13 A I don't know the number. I know there was
14 quite a series of letters in the newspaper at that
15 time which indicated there had been several meetings,
16 but I really don't know. I wasn't keeping up with
17 it.

18 Q Did Mr. Johnson ever give you any update on
19 the status of the plea negotiations?

20 A I don't recall that.

21 Q It is your testimony that, other than this
22 one --

A If I had been expecting anything to come of it, I would have gone asking.

Q Why didn't you expect anything to come of the plea negotiations?

A I thought he was just going to stall for time.

Q Why did you think he was looking to stall for time?

A Maybe something would have pulled it out of the fire, or somebody. Have you ever met a lawyer who wanted anything to go when it is supposed to?

Q We were just discussing that at lunch.

After the indictment was filed against Mr. Hale, what action do you recall taking?

A I went to plea and arraignment. We had three different plea and arraignments with all the defendants. I was primarily working on Dean Paul, Limited, really. I put together the Hale exhibits for discovery. I circulated those to defense counsel, motion stuff.

Q Did you have any communications with Mr. Coleman following the --

A I told him I was going to indict Hale again in November, and I think I gave him a draft copy of that indictment at some point in time. I went ahead and fixed up another indictment on Hale involving Paul sales and also the Sunbelt transactions.

I finished working up those, had a bunch of work to do on those. David Reign went around interviewing people and put that together.

That was supposed to have been right -- Mr. Mackay got there a week before that one was supposed to go.

So that one never got out. That's basically what I was doing, trying to stay out of Irons's way, I guess.

Q Did you have any discussions with regard to a possible plea from Mr. Hale with Mr. Coleman?

A No.

Q Do you know whether anyone else in your office had any further discussions with regard to a possible plea?

A No.

MR. FISHMAN: No, they didn't, or no, you

1 don't know?

2 THE WITNESS: I don't know.

3 BY MR. GIUFFRA:

4 Q Following the indictment of Mr. Hale, did
5 you have any discussions with regard to either the
6 Hale matter or the Madison matter with anyone at main
7 Justice?

8 A No, not until Mr. Mackay came down and
9 picked up the files.

10 Q Do you recall when Mr. Mackay came down to
11 pick up the files?

12 A That would be around the first week in
13 November.

14 Q Of 1993?

15 A Yes.

16 Q Mr. Jackson, I would like to show you a
17 document bearing Bates number FBI 1542, 1543.

18 (Exhibit FBI 1542-1543 identified.)

19 BY MR. GIUFFRA:

20 Q First let me ask you a question. Are you
21 aware of any attempt on the part of anyone to delay
22 or hinder the investigation relating to David Hale or

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1 Capital Management?

2 A No.

3 Q This document, 1542, 1543, it is a memo
4 from Irons to SAC Little Rock, dated August 20,
5 1993. If you could just take a look at that.

6 (Witness examined the document.)

7 A That's what I was telling you about, we
8 opened up the 39 case. Are you interested in this
9 right here?

10 Q Let's read it into the record. "Rider
11 further advised the Assistant United States Attorney
12 assigned to the matter reported being told a Little
13 Rock attorney had traveled to Washington instant date
14 to meet with unknown officials to attempt to have the
15 investigation quashed."

16 A What that's about is I told them that
17 Richard Mays had gone to Washington, and my
18 assumption was that they were going to try to get a
19 hearing up here, to jerk the chain. That's happened
20 before, where they either get Department of Justice
21 or some Senator to intervene.

22 Q Who was Mr. Mays again? What is his

1 background?

2 A He is a very prominent black lawyer. He
3 used to be -- I think he may have been an appellate
4 court judge there or Supreme Court justice by
5 appointment. He is very well connected.

6 I was assuming that they would try to get
7 our decisions reviewed up here.

8 Q So, is this just a belief on your part?

9 A Just a guess.

10 Q It was your belief that Mr. Mays --

11 MR. FISHMAN: I think he said "guess."

12 THE WITNESS: Just a guess. I did know he
13 went to Washington. Hale has always been in
14 politics. His brother is very well politically
15 connected. In the state system you have fixes all
16 the time.

17 So they may have been under the mistaken
18 assumption that you could do it on a federal level.
19 I knew it wasn't going to work.

20 BY MR. GIUFFRA:

21 Q But you had a belief that Mr. Mays might
22 attempt to go to main Justice or somewhere else in

1 Washington to try to, in some way, affect the course
2 of the investigation into Madison?

3 A Or at least have somebody review what the
4 hell we were doing.

5 Q Was this with regard to just Madison or
6 Hale or both?

7 A It would be Hale. Mays wouldn't have known
8 anything about Madison.

9 Q So, it was your belief that Mays would go
10 to Washington --

11 A I don't know that. I just threw that out.
12 It wasn't anything concrete. Hell, the FBI would
13 come back with all these weird scenarios too, so it
14 is no different than what I heard from them.

15 BY MR. COLE:

16 Q If I'm understanding you correctly,
17 Mr. Jackson, your guess was that Mr. Mays might try
18 to have the matter reviewed in Washington because of
19 Mr. Hale's political connections?

20 A That would be part of it. I really
21 can't -- you could contact SBA to see if they are
22 really serious about the referral or whatever it is.

1 I don't think the Arkansas Senators would
2 touch a matter like this, but they might get somebody
3 at Justice to review whether or not we were
4 proceeding in a proper manner, something like that.
5 But I don't know that that's what occurred.

6 Q What I'm getting at is the basis for that
7 action would have been Mr. Hale as opposed to the
8 potential involvement of the Clintons?

9 A It would have been just knowing all the
10 players.

11 Q And not necessarily the allegations that
12 Mr. Hale later made about the Clintons that are well
13 publicized?

14 A No. It would just be help David. If they
15 did try it and it didn't work, I suspect that's why
16 Hale came out with that -- he must have been mad at
17 somebody. Nobody helped him so he started lashing
18 out at all of these prominent people.

19 I don't know what the psychology is or
20 exactly what happened. I have no idea.

21 Q I was trying to understand whether it was
22 your guess, I believe is the word you used, at the

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1 time that Mr. Hale was going to go to Washington and
2 make the allegations that he subsequently did. I
3 think you answered that question.

4 A I have no idea that even Mays was. That's
5 something I threw out to the FBI one day, without any
6 basis.

7 BY MR. GIUFFRA:

8 Q After you indicted Mr. Hale, did there come
9 a time when Mr. Hale made some allegations through
10 the press with regard to the Clintons?

11 A Yes.

12 Q When was that?

13 A He started it the week before the
14 indictment apparently, but it went public in the
15 newspapers on September 23rd, the same day of the
16 indictment, I think.

17 I was shown by the -- I was shown a
18 newspaper article about a month or so ago when they
19 interviewed me out at the special counsel thing, that
20 had a dateline on it of September 23rd. So I'm
21 guessing September 23rd must be the date, the same
22 date when the first article hit the paper. I thought

1 it was before the indictment.

2 He announced his own indictment. I'm not
3 joking. He went public with it. I'm thinking it was
4 before the indictment that he went public.

5 Q Did Mr. Hale make the same allegation --
6 what was the allegation that Mr. Hale made against --
7 was it against President Clinton?

8 A I haven't read that article in a long time,
9 but I think it was that same one about they were
10 pressuring -- big pressure to make the Master
11 Marketing loan to McDougal.

12 Q To Susan McDougal?

13 A Yes.

14 Q Did Mr. Coleman ever discuss that specific
15 allegation with you?

16 A No.

17 Q Did you ever discuss that specific
18 allegation? Let's define that. Meaning the
19 allegation that Bill Clinton pressured David Hale to
20 make the SBA loan to Susan McDougal for \$300,000?
21 Did you ever discuss that with Mr. Johnson?

22 A No.

1 Q Did you ever discuss that allegation with
2 Ms. Casey?

3 A No. It was just something I read in the
4 newspaper.

5 Q After this allegation appeared in the
6 newspaper, did you ever discuss the allegation with
7 Mr. Johnson?

8 A No.

9 Q Did you ever discuss it with Ms. Casey?

10 A No.

11 Q Have you ever discussed this allegation
12 with Mr. Johnson?

13 A I don't think so.

14 Q Have you ever discussed this allegation
15 with Ms. Casey?

16 A No.

17 Q Have you ever discussed with Mr. Johnson
18 whether Mr. Coleman provided information with respect
19 to this allegation during the course of the plea
20 negotiations that Mr. Johnson and Ms. Casey conducted
21 in the fall of 1993?

22 A What they discussed I don't know. All I

1 was doing was tossing out some names, potential
2 people that might be involved in the Hale matter.

3 Q He mentioned the Clintons?

4 A Either he did or I did. They had already
5 been named. It wasn't any big deal. There were no
6 specifics.

7 Q Did there come a time when the Eastern
8 District of Arkansas was recused from the matter
9 involving Mr. Hale, and then also the Madison matter?

10 A That was the Friday before Mr. Mackay
11 came. That was about 11:00 -- at least I first heard
12 about it about 11:00 that Friday.

13 Q This would be in November of 1993?

14 A Yes. It would have to be still in
15 November. It would be in November. I'm pretty sure
16 it was a Friday. I'm pretty sure it was around 11:00
17 in the morning.

18 Ms. Casey apparently had called her office
19 and left word with her secretary. Her secretary told
20 me that the office had been recused.

21 Q Where was Ms. Casey at this particular
22 time? Was she in Washington?

1 A I assume she may have been in Washington.
2 She wasn't in the office.

3 Q Do you know if she was in Little Rock?

4 A I think she was in Washington. I don't
5 know. All I know is her secretary told me we had
6 been recused and I was to stop whatever I was doing.
7 So I made some phone calls.

8 Q Did you ever discuss with Ms. Casey whether
9 she should recuse herself from the matter involving
10 Mr. Hale or Madison?

11 A No.

12 Q Did you ever discuss Ms. Casey's recusal
13 from the Hale-Madison matter with Mr. Johnson?

14 A No.

15 Q Did you ever discuss Ms. Casey's recusal
16 from the Hale-Madison matter --

17 A Not before the fact. I think afterwards
18 Michael told me we had been recused. There was no
19 discussion of it.

20 Q Did he ever give you an explanation for why
21 Ms. Casey decided to recuse herself in this matter?

22 A No. I wasn't involved in the recusal.

1 Q Do you recall any discussions of a missing
2 document from Capital Management or from Mr. Hale's
3 residence that would in any way implicate --

4 A Yes. We were accused of stealing a
5 document from the Master Marketing file.

6 Q Who accused you of stealing a document from
7 the Master Marketing file?

8 A It came up in this manner. About a month
9 after the search warrant, Randy Coleman called. I
10 was out at the FBI. He wanted to come out and look
11 at the Master Marketing file. So I pulled the Master
12 Marketing file. We set a small room up toward the
13 reception area. He went through it, and he told me
14 what he was looking for.

15 He told me it was a letter that was
16 supposedly handwritten, that it was supposedly from
17 McDougal to David Hale which indicated that Bill was
18 going to help him get the money together to bring the
19 Master Marketing loan current.

20 After he looked through the file, I looked
21 through it myself. Then I went back and got the
22 duplicate copy, and it is not in the duplicate copy

1 either, which meant that had it been in the file, it
2 didn't get copied out at the FBI that night of the
3 search warrant.

4 So, the implication would be if that letter
5 was there, there is only one person who could have
6 taken it or lost it, which is me.

7 Q Did he indicate to you that this was a
8 letter from McDougal to Hale?

9 A Yes. It was supposed to be handwritten. I
10 have had a dozen newspaper men call me about it.

11 Q That frequently is the case in this matter
12 or with regard to witnesses.

13 A But basically the implication was that I
14 had either lost it or had taken it.

15 Q Did Mr. Coleman indicate to you the date of
16 this particular handwritten letter?

17 A No.

18 Q Just so the record is clear, because I'm
19 not sure it is, when did Mr. Coleman see you about
20 this missing letter, or purportedly missing letter?

21 A It would have been about a month after the
22 search and probably a month before the indictment.

1 It would have been sometime in August, I think. But
2 he came out and I put the file in front of him and he
3 went through it.

4 Q So we are clear on this, you had the
5 meeting with Mr. Coleman sometime in early August at
6 which you sort of had a very, very preliminary
7 discussion.

8 A It would have been at a later point in time
9 than that. He called up and said he wanted to look
10 at the Master Marketing file, and I said, well, come
11 on out. He came out. I pulled him the original, and
12 he went through and what he was looking for wasn't
13 there.

14 I went back and got the office copy, which
15 should be a duplicate, and the letter wasn't in
16 there. So, therefore, the letter apparently -- I
17 have always assumed this -- if the letter exists,
18 Hale squirreled away a bunch of stuff.

19 The SBA had the same problem with him. He
20 produced this; he held back a bunch of checks. He
21 may have the thing somewhere and doesn't know where
22 it is himself. I don't think we lost it, and I know

1 I didn't take it.

2 Q Mr. Coleman, though, accused you of taking
3 the document?

4 A Either he or David.

5 Q Did you ever meet with David Hale?

6 A Not other than about two seconds at the
7 plea and arraignment.

8 Q At that time did he accuse you of --

9 A No. I'm talking about to newspaper people.

10 Q This would be Mr. Hale complaining to
11 newspaper people and you reading --

12 A No. It has never been in the newspaper.
13 They would call me and want verification, did
14 Fletcher take the letter and tear it up, does
15 Fletcher have it in a scrapbook, you know.

16 I have had a -- the last one that called me
17 was Bill Simmons of the Associated Press.

18 There has never been a newspaper article,
19 as far as I know. But there is that allegation out
20 there.

21 Like I told one of Fiske's people, here I
22 am, I have lost the smoking gun letter.

1 Q When you obtained the documents or seized
2 the records from Mr. Hale's office, who else
3 participated in the seizure of those documents?

4 MR. FISHMAN: I'm not sure the record is
5 clear that he participated in the seizure.

6 THE WITNESS: I didn't go to the office. I
7 stayed at my office and waited until they got back.

8 BY MR. GIUFFRA:

9 Q Who ended up actually executing the search
10 warrant?

11 A Steve Irons. I think Walters went. The
12 rest of them were female agents, I believe. Gretchen
13 Hall went. David Reign was at Waco. I figured
14 something bad was going to happen, that this was all
15 going to get in the newspapers and on TV, so I stayed
16 at the office. I called that law firm and tried to
17 get the Townsend documents and then I went through
18 the stuff. As far as I know, I'm the only one that
19 went through the stuff before it was copied.

20 Q They brought the documents to your office?

21 A No. They were at the FBI.

22 Q You went to the FBI and reviewed all the

1 documents?

2 A Yes.

3 Q You don't recall seeing this handwritten
4 note?

5 A No, I don't.

6 Q Do you think this is the kind of document
7 you would remember if you had seen it?

8 A I think if I had seen it and read it, I
9 would remember it, which means, in my mind, I didn't
10 see it. I definitely didn't take anything. The way
11 I operate, one file at a time, I am unlikely to have
12 lost anything.

13 Q Did you have any further conversations with
14 Ms. Casey -- strike that.

15 Did you have any further conversations with
16 Jean Lewis other than the conversation you testified
17 to earlier?

18 A Oh, yes.

19 Q Could you --

20 A First in order was that one I was telling
21 you about for the law on campaign contributions.

22 Q She asked you just to find out whether an

1 S&L could make a contribution to a political
2 campaign?

3 A Yes. Later on, we had conversations about
4 getting some of their records. Then we had the
5 conversation about tracing the \$300,000, which she
6 was doing for me.

7 Then I didn't want to make another trip
8 down to Dallas, so I called her one day to see if she
9 had the list of the Susan McDougal real estate
10 commissions. And at that point she told me she could
11 only talk to Irons. My assumption was Irons called
12 her and told her not to talk to me anymore.

13 So, that was the last time.

14 Q This was because of the fact that you and
15 Irons were no longer speaking with one another?

16 A Yes. I assume he called her and told her
17 to not answer my questions.

18 Q Did Ms. Lewis indicate to you any
19 frustration with the pace at which the Department of
20 Justice was handling this particular referral?

21 A No. Other than the discussion that one
22 time about bringing the documents up -- I mean

1 bringing the transactions up into '86, we didn't
2 discuss that referral. We didn't discuss the nine
3 that were to come.

4 Q When did you learn of the subsequent
5 referrals?

6 A I went out to Federal Express office to
7 pick them up. The office had moved and they couldn't
8 find us. So I had to go out and pick them up.

9 Q Did you -- after you obtained the referrals
10 from the Federal Express office, did you review those
11 referrals when you got back to the office?

12 A I took them back, gave them to Michael
13 Johnson. He put them in his bottom desk. Before we
14 had that meeting on subpoenas, I pulled them out and
15 looked at them.

16 Q Do you know whether Mr. Johnson had
17 reviewed the additional referrals?

18 A I don't know. I did read through them
19 before that meeting, which was the week before Mackay
20 came.

21 Q Did you ever discuss the subsequent
22 referrals with Mr. Johnson?

1 A Other than at the meeting, that meeting was
2 just about subpoenas.

3 Q What do you recall about the discussion of
4 those referrals at the meeting with Mr. Johnson?

5 A I didn't stay for the whole meeting.

6 Q This is the meeting with Mr. Mackay?

7 A No. This is the meeting with some FBI
8 agents -- with Irons and Whitehead and Gretchen Hall
9 and David Reign. This was a later meeting about
10 grand jury subpoenas. It was the continuing problem
11 of Fletcher and his subpoenas, and Michael was going
12 to take it over.

13 So I sat in part of the meeting, but I
14 didn't stay for the whole thing. But we didn't sit
15 down and talk about -- one of those was a pretty good
16 referral.

17 Q Do you recall which referral that was?

18 A Peacock.

19 MR. FISHMAN: I'm sorry?

20 THE WITNESS: Peacock.

21 BY MR. GIUFFRA:

22 Q I'm a little unclear. You had the meeting

1 in September with Ms. Casey, Mr. Johnson and
2 Mr. Irons where you discussed subpoenas?

3 A And Gretchen Hall.

4 Q Then there was a later meeting?

5 A This was a meeting that occurred after the
6 nine new referrals came in.

7 Q Do you recall approximately what the time
8 of that meeting was?

9 A It would be the week before Mackay came.
10 We only had the referrals about two weeks before
11 Justice took it over.

12 Q Did you ever discuss the referrals with
13 anyone in main Justice in Washington?

14 A No.

15 Q Do you know whether Mr. Johnson discussed
16 those referrals with anyone in the agency?

17 A I don't know.

18 Q Do you know whether Ms. Casey discussed
19 those referrals with anyone in main Justice?

20 A No.

21 MR. FISHMAN: No, you don't know?

22 THE WITNESS: I don't know.

1 BY MR. GIUFFRA:

2 Q Do you know Webster Hubbell?

3 A Yes.

4 Q And how do you know Webster Hubbell?

5 A I have run into him here, there and yonder
6 in Little Rock. I think we may have had some cases
7 that overlapped back when I was doing civil cases.
8 He also represented the RTC in a bunch of items.

9 Q Did he work on those items with you?

10 A No. They never did call me. I was
11 involved with some but they never did call me with
12 the information. I think his summer associates are
13 the ones who did the work.

14 Q But he is someone if he met you, he would
15 know who you are?

16 A Oh, yes.

17 Q When was the last time that you spoke to
18 Mr. Hubbell?

19 A About a year before he went to Washington.
20 One of his friends got in trouble and he came down to
21 help him.

22 Q Do you know whether Mr. Hubbell ever

1 discussed -- strike that.

2 Do you know whether Ms. Casey knew
3 Mr. Hubbell?

4 A That I don't know.

5 Q Do you know whether Ms. Casey ever
6 discussed anything having to do with either Madison
7 or David Hale with Mr. Hubbell?

8 A No.

9 Q Do you know whether Mr. Johnson knew
10 Mr. Hubbell?

11 A I would be surprised if he didn't, but I
12 really don't know.

13 Q Do you know whether Mr. Johnson ever spoke
14 to Mr. Hubbell with regard to anything involving
15 Madison or Mr. Hale?

16 A I don't know.

17 Q Do you know whether Mr. Coleman ever
18 discussed -- strike that.

19 Did Mr. Coleman ever indicate to you that
20 he spoke to Mr. Hubbell about Mr. Hale?

21 A No.

22 Q Do you know whether anyone in the Eastern

1 District of Arkansas, including Ms. Casey, ever spoke
2 with anyone at the White House with regard to David
3 Hale or Madison?

4 A No, I don't know.

5 MR. GIUFFRA: I think I am basically done.

6 I want to look through my documents. If I could have
7 a second.

8 (Recess.)

9 BY MR. GIUFFRA:

10 Q I want to show you a memo from Steven Irons
11 which is dated October 1, 1993, and it references a
12 meeting that was held on September 24, 1993. If you
13 could just read this.

14 (Witness examined the document.)

15 A That's the same meeting. Oh, hell fire.

16 Excuse me.

17 (Witness examined the document.)

18 Q Does this document refresh your
19 recollection of a meeting that was held on 9/24/93
20 with Ms. Casey, Mr. Johnson and yourself, as well as
21 Whitehead, Reign, Hall and Irons?

22 A No. I recall a meeting that we had about

1 that period of time where the discussion was what
2 subpoenas and so forth were going to be done. I
3 don't recall all of these topics being in there.

4 Q What topics don't you recall being
5 discussed at the meeting?

6 A I don't recall any discussion where
7 Ms. Casey was talking about recusing on Tucker and
8 Stephen Smith. I don't recall -- she may have said
9 that there, but I wasn't paying any attention. She
10 wasn't saying it to me, so I don't recall any part of
11 that conversation. I do not remember Johnson saying
12 anything about the Department of Justice would take
13 it over.

14 I don't really remember them voicing all
15 those objections to me there at the meeting, although
16 I know they had them.

17 Q What objections do you recall them having
18 about you?

19 A They were wanting broader subpoenas than
20 what I was willing to issue.

21 Q This is the FBI?

22 A Yes.

1 Q And why were you not willing to issue
2 broader subpoenas?

3 A They already had the stuff. They already
4 had the stuff. They had it for about five years.

5 Q This is the RTC or the FBI had the stuff?

6 A The FBI, or they had the stuff that you
7 would need.

8 But this is strange. "The present problems
9 being caused by AUSA and what was taken in the search
10 warrant of Hale's business was noted as an example of
11 a restriction."

12 We had sat down and listed with the FBI
13 what items to take. I included some items and Hall
14 asked that they be stricken off.

15 Q It is your testimony, one, you don't recall
16 any discussion of recusal at any time involving
17 Ms. Casey until the time that she recused herself?

18 A I'm not saying I wasn't there and it was
19 said. It is just I have no recollection of that part
20 of the meeting, if it occurred at that meeting.

21 Q Your recollection with regard to the claim
22 that you were somehow limiting the FBI's

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1 investigative efforts was that the documents that the
2 FBI wanted that the FBI already had?

3 A Yes.

4 Q Do you recall what those documents were?

5 MR. FISHMAN: As a general --

6 BY MR. GIUFFRA:

7 Q Can you describe it in a general way
8 without upsetting Mr. Fishman.

9 MR. FISHMAN: You are not upsetting me. I
10 have to object to that characterization. It is not a
11 question of upsetting or not upsetting me.

12 The issue, as you know, is if those
13 documents were obtained by subpoena, whether
14 Mr. Jackson's answer to your question would reveal
15 the nature and scope of the subpoena, which might get
16 him into trouble with the federal court.

17 MR. GIUFFRA: I agree.

18 THE WITNESS: They had the stuff in the
19 first investigation.

20 BY MR. GIUFFRA:

21 Q What --

22 A The first investigation into Madison. They

1 already had the stuff. What had been gotten was
2 sitting down in Dallas. We already went down and
3 copied a bunch of it.

4 Q This would be the first investigation of
5 Mr. McDougal that resulted ultimately in his
6 acquittal?

7 A Yes. All you had to do was get the same
8 stuff they had back then.

9 Q Had you worked on that investigation?

10 A No.

11 Q How were you aware they were the same
12 documents?

13 A I had been through the stuff.

14 Q At what point in time?

15 A At the FBI.

16 Q This was FBI Dallas had the material?

17 A No. Up here. The OTS down there had the
18 enforcement file which has all of the documents and
19 stuff in it, which the FBI had up here at one time.
20 We had all the stuff we needed.

21 Q That would be all the information with
22 regard to the -- strike that.

1 Do you recall any discussion with Mr. Irons
2 of the Master Marketing loan?

3 A No. We had ceased to talk.

4 Q Do you recall any discussion with anyone
5 with regard to the Master Marketing loan?

6 A I may have talked with David Reign, but
7 basically Master Marketing tied in to Dean Paul,
8 Limited.

9 By this point in time, the relationship
10 between me and Mr. Irons, as you can tell, was
11 getting pretty brutal.

12 Q That would have been at what point in time
13 that you stopped speaking?

14 A That was around the middle of September.
15 This is about the point in time when I was asking to
16 be taken out of the case.

17 Q When did you ask to be taken out of the
18 case?

19 A Well, halfway back in August or September,
20 if that's the correct date of that meeting, I
21 suggested to Johnson about replacing me, I think on
22 that very date, whenever we had that big meeting,

1 about taking me off the case and replacing me with
2 somebody else.

3 Q The entire case, both the Hale case and the
4 Madison case?

5 A Yes. Earlier I talked about bifurcating
6 it, which would get me away from Irons. If you
7 weren't going to bifurcate it, get me completely away
8 from it.

9 Q Why did you want to get off the case?

10 A I didn't want any more dealings with
11 Mr. Irons and the FBI.

12 Q What did Mr. Johnson say about taking you
13 off the case?

14 A He didn't do it.

15 Q Did he say why he wouldn't take you off the
16 case?

17 A No.

18 Q Just so the record is clear, your
19 relationship with Mr. Irons soured for what reason
20 again?

21 A I guess we just didn't like each other.

22 Q Given the fact that the committee is now

1 investigating the handling of the referrals by the
2 Department of Justice, can you think of any other
3 matters that you might have testimony about with
4 regard to that subject matter that we haven't asked
5 you about today?

6 A No. See, I know very little.

7 MR. GIUFFRA: Mr. Cole.

8 MR. COLE: Thank you.

9 EXAMINATION

10 BY MR. COLE:

11 Q Mr. Jackson, what I would like to do is try
12 to go quickly, but also I will, by necessity, have to
13 go back over some of the areas that Mr. Giuffra has
14 already covered. So I apologize in advance for
15 skipping around some.

16 If I could direct your attention back to
17 your prior testimony this morning about the review of
18 the 1992 RTC criminal referral that you conducted for
19 Mr. Banks.

20 A Okay.

21 Q By way of background, you testified that
22 your analysis and evaluation of that review was

1 influenced by the prior acquittal of Mr. McDougal; is
2 that correct?

3 A Yes. That was the big sticking point.

4 Q If I understood your testimony correctly,
5 you said that Mr. McDougal had made statements to the
6 press concerning Mr. Banks and that there may have
7 been improper motivation in the prosecution of
8 Mr. McDougal by Mr. Banks?

9 A That was the tenor of the newspaper
10 article.

11 Q And Mr. McDougal had run for political
12 office against Congressman Hammersmith?

13 A Yes.

14 Q And had Congressman Hammersmith played a
15 role in Mr. Banks's appointment as a U.S. Attorney?

16 A I would have to think so, since he would be
17 the ranking Republican during the Bush
18 Administration, I would say so.

19 Q Mr. Banks was a Republican political
20 appointee?

21 A Yes.

22 Q Was it Mr. Banks's concern that the

1 subsequent prosecution of Mr. McDougal would be
2 viewed as politically motivated?

3 A He didn't say it. That's what I said. He
4 really didn't say a whole lot when I went back in to
5 talk to him. He asked a few questions, but it was
6 mostly me doing the talking.

7 Q Had Mr. Banks been nominated for a federal
8 judgeship at that time?

9 A Yes.

10 Q Was that a factor that you and Mr. Banks
11 discussed in connection with the --

12 A No.

13 Q Do you know whether that played any role in
14 Mr. Banks's consideration of whether to pursue the
15 referral?

16 A I wouldn't know.

17 Q Had your office received criminal referrals
18 from the RTC prior to the receipt of that referral in
19 September?

20 A Yes. We've received some since.

21 Q Do you recall approximately how many
22 referrals you had received from the RTC up to that

1 time?

2 MR. FISHMAN: Him personally or the
3 office?

4 MR. COLE: The office. Thank you.

5 THE WITNESS: You have different spans of
6 time. For a while it was Federal Home Loan Bank
7 Board who sent them in. Then it became the FDIC.
8 Then it became the RTC.

9 So exactly what the source and what the
10 time span is, I just don't know. You had all three
11 outfits sending them in, the RTC being the last kid
12 on the block. Now, which ones they have sent in or
13 what the number of them, I don't know.

14 BY MR. COLE:

15 Q Had you received a prior referral from
16 Ms. Lewis at the RTC?

17 A I hadn't. I never had met her or talked to
18 her before.

19 Q You testified earlier that your
20 understanding was that Ms. Lewis read the New York
21 Times article?

22 A That's what I think I saw in the paper one

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1 time or heard somebody say, that that's what
2 triggered her getting into the -- or did she say that
3 on TV?

4 Q That was going to be me question, whether
5 you had a discussion with her.

6 A No, I didn't have any discussion with her.
7 We didn't discuss that referral except for the fact
8 that I needed it at a later point in time.

9 Q So you had no discussions with Ms. Lewis at
10 the time the referral was submitted --

11 A No.

12 Q -- to the office?

13 A No.

14 Q Are you aware of whether others had
15 discussions with Ms. Lewis about that time?

16 A I don't know. All I know is I read it and
17 reread it and reread it, and then went and talked to
18 Mr. Banks, and that was the end of my involvement.

19 Q Do you know whether Mr. Irons had any
20 discussions with Ms. Lewis about the referral?

21 A They had a bunch of conversations. Now,
22 what they were about, I don't know.

1 Q Was Ms. Lewis calling to check on the
2 status of the referral?

3 A I don't know what their conversations were
4 about. I do know there were a series of them. There
5 was a memo she gave to Congressman Leach which refers
6 to some of that, if you get hold of that.

7 Q If I could ask you to review a document
8 that is a two-page document -- Department of Justice
9 numbers 668, 669 -- the first two pages of the
10 material that I handed you.

11 I believe Mr. Giuffra showed you a copy of
12 that document earlier.

13 A No, he didn't show it to me. The first
14 time I ever saw it was about two months ago in the
15 newspaper. I didn't see it at the time. I only saw
16 it about two months ago.

17 Q Take time to review it now, if you need
18 to. My question is if that document is consistent
19 with the discussions you had with Mr. Banks after you
20 received the referral?

21 A Yes. It seems there is one point in here
22 that he added. I don't think I discussed the fact we

1 couldn't recover any money; in other words, you
2 weren't going to be able to get any restitution or
3 anything like that. But I think the rest of it is
4 basically what I was saying.

5 The emphasis I had was that you shouldn't
6 take a bite at the apple unless you had a very -- a
7 second bite at an apple unless you had a very good
8 case that would have some jury appeal.

9 But this is the same letter that was in the
10 paper not too long ago. I would say that is
11 basically in line with what I thought.

12 Q If I could direct your attention to the
13 third paragraph of that letter, the sentence that
14 states "the only allegations having any credibility
15 worthy of possible deliberation for investigation
16 exist against Mr. and Mrs. McDougal and Lisa
17 Anspaugh."

18 A They were the only ones involved in the
19 kite.

20 Q So when you testified earlier today that,
21 in your view, investigation and prosecution of this
22 matter would be limited to the McDougals, I can't

1 recall your exact words, but I believe you said it
2 was just the McDougals or something like that --

3 A Yes.

4 Q -- this reference in the letter is
5 consistent with your analysis on that point?

6 A Yes. I'm assuming that -- what's the date
7 of the letter?

8 (Witness examined the document.)

9 This is perfectly consistent with the
10 discussion that he and I had. See, I didn't know
11 this letter existed until I saw it in the paper a
12 couple months ago.

13 Q Did you have any discussions with Mr. Banks
14 about the timing of the receipt of the referral in
15 relation to the election?

16 A I don't recall anything about that. The
17 only thing I recall is basically the merits of the
18 referral and the statute of limitations problems, if
19 any.

20 Q Did you and Mr. Banks have any discussions
21 about whether the referral might have been
22 politically motivated?

1 A No.

2 Q Did you have a view as to whether that was
3 the case?

4 A I wouldn't have known. All I know is here
5 is the referral, here was something I had to sit down
6 and look at and work up. I don't know if it was or
7 wasn't.

8 Q The reference at the bottom of page 668,
9 the bottom paragraph, to not taking any action
10 until -- not taking any action prior to November 3,
11 1992, that's a reference to the Presidential
12 election, is it not?

13 A I would assume so. I had nothing to do
14 with any of that part of the letter. I am assuming I
15 may have had something to do with some of these
16 opinions that are expressed up here at the front.

17 Q Do I understand your testimony correctly
18 that the next knowledge you had of the 1992 referral
19 is when you asked Mr. Dodson about it and he told you
20 that it had been sent to the Department of Justice in
21 Washington?

22 A Yes.

1 Q Did you have occasion to review the
2 subsequent letter that Mr. Banks sent to the
3 Department of Justice in Washington concerning that
4 criminal referral? I will show you a copy --

5 MR. FISHMAN: He was shaking his head no.

6 THE WITNESS: No.

7 BY MR. COLE:

8 Q Your answer is no?

9 A Most of what I know has come from
0 newspapers. It hasn't come from personal --

1 Q So how did you first come to have further
2 contact with Ms. Lewis of the RTC after the date of
3 the receipt in the U.S. Attorney's Office of the 1992
4 referral?

5 A Irons had referred her to me. She had a
6 question of Arkansas law or state law, the legality
7 of campaign contributions by a state savings and
8 loan.

9 Q Did you speak with her on the telephone at
0 that time?

1 A Yes. That's when I was out there working
2 on Hale.

1 Q So at that time you were already working on
2 your investigation of Mr. Hale that had followed from
3 the RTC Inspector General's referral?

4 A No, from the SBA.

5 Q From the SBA Inspector General's referral.

6 A Yes.

7 Q Do you recall your initial telephone
8 conversation with Ms. Lewis?

9 A Yes. I told her I would see what I could
0 find. I went upstairs to the library and started
1 looking through the statutes and couldn't find it. I
2 assumed if there was anything, it was going to have
3 to be a reg. She probably knew some people over in
4 the state security department which regulates, and
5 she called them to get a copy of the regs. It might
6 be the same as federal, that you can't make
7 contributions. That seemed to satisfy her. I think
8 she was going to do that.

9 Q Did she tell you she was working on more
0 criminal referrals relating to Madison?

1 A She didn't, but I think Irons did. And the
2 question that she was asking would have to do with

1 that Peacock referral, campaign contributions,
2 whether or not I guess they could make campaign
3 contributions to the governor's campaign or something
4 like that. So I'm guessing that's what she was
5 working on at that point in time.

6 Q Did she ask you any questions about her
7 prior referral on Madison?

8 A No. I don't think she -- the only one that
9 brought that up, and that was that I would have been
10 better off had she worked over into '86, which is the
11 period that I was messing around with -- in other
12 words, had she brought it forward.

13 But I don't recall any -- we never
14 discussed the contents of what was going to be in any
15 new referrals.

16 Q And what was your next contact with her?

17 A About getting some documents out of the
18 Dean Paul RTC file. I was wanting the litigation. I
19 went to the clerk's office and pulled what I could on
20 a foreclosure on the Dean Paul, Limited property.

21 I was looking for some interrogatories. I
22 thought they might be up there. I called up there

1 and sent a subpoena. I had some conversations with
2 her about getting the records and we were having a
3 little bit of delay on the fiche and film. Then I
4 called about the 300,000.

5 The last call was I was wanting to see if
6 she had a copy of that list I had seen down in
7 Dallas, that I didn't want to have to go back to
8 Dallas to get, which was the Susan McDougal real
9 estate commissions off of some sales in Castle
10 Grande. That's when she told me she couldn't talk to
11 me anymore.

12 Q What did she tell you about why she
13 couldn't talk to you anymore?

14 A That she could only talk to Irons.

15 Q Did you have any subsequent contacts with
16 her?

17 A No. That was the last ever. I take that
18 back. She did call about Independence Federal.
19 That's when I started to ask her did Irons tell her
20 not to talk to me. That's when she did the big memo
21 that she gave to Congressman Leach, like I was
22 harassing her or something.

1 I had forgotten about that one. That's
2 it. There has never been any since. I was up by her
3 office, right be where her door is, but she wasn't
4 there. It was about six months or a year ago. I was
5 there on another savings and loan case. She wasn't
6 around.

7 MR. GIUFFRA: That's Ms. Lewis, right?

8 THE WITNESS: Yes. Her office was still
9 there.

0 BY MR. COLE:

1 Q I realize you testified earlier that there
2 came a time when you and Mr. Irons, I think your
3 words were, ceased to communicate. But prior to that
4 time when you were working with Mr. Irons on matters
5 relating to Mr. Hale and Madison Guaranty, did you
6 ever discuss Ms. Lewis with Mr. Irons?

7 A I'm sure we did. I really don't recall
8 what we may have said.

9 Q Do you recall whether he ever expressed any
0 views about Ms. Lewis and her work on the criminal
1 referrals?

2 A I think one time he said something about he

1 didn't understand why she is doing Madison when you
2 have big institutions like First Federal and Savers.
3 I do think I remember that comment.

4 I don't remember him saying anything
5 personally derogatory toward her.

6 Q Do you have any knowledge as to whether the
7 RTC -- do you have any knowledge as to whether the
8 FBI sent memoranda or other written communication to
9 the RTC concerning S&L investigations involving
0 Savers and First Federal?

1 A No, I wasn't involved in that.

2 Q So he didn't mention that at the time?

3 A I think I did hear that comment at one
4 time.

5 Q When you initially began to investigate the
6 Hale matter, Mr. Pence was the acting U.S. Attorney?

7 A Yes.

8 Q And was that -- you, I believe, testified
9 earlier that there was a period of time when only you
0 and three officials from the FBI were aware of that
1 investigation, four persons?

2 A Yes. Pence would have been aware, because

1 he assigned it. Basically other than him having
2 assigned the case, the only people who would know the
3 nuts and bolts of it were four people.

4 Q And was that the status of the matter at
5 the time Ms. Casey came into the office?

6 A Yes.

7 Q And so then she and Mr. Johnson --

8 A No, no. Because you had the search
9 warrant. So everybody out at the FBI knew about it
10 then. I would say then it had become --

11 Q It was common knowledge in the office?

12 A It wasn't common knowledge. But we issued
13 subpoenas, so everybody in our office and everybody
14 in the FBI would have known about it.

15 Q So by that point in time, it was common
16 knowledge?

17 A Yes.

18 Q When Ms. Casey joined the office, did you
19 have any kind of meeting or session with her where
20 you reviewed the status of your workload or case
21 load?

22 A No.

1 Q Did she make any inquiries about the Hale
2 investigation?

3 A Not of me. I assumed she was talking to
4 Michael, and I was talking to Michael, or what talk
5 there was.

6 Q You testified that you -- I don't want to
7 put words in your mouth -- but I believe you chose
8 not to attend the meetings Ms. Casey and Mr. Johnson
9 had with Mr. --

10 A I don't know that I chose not to. I just
11 didn't go. I didn't see any sense --

12 Q Were you excluded?

13 A I definitely wasn't excluded. I could have
14 gone if I wanted to, I guess.

15 Q Had you wished to go, your understanding
16 is --

17 A Yes. I'm assuming I would have. I don't
18 know any reason why they would have.

19 Q What was your reason for not attending
20 those meetings?

21 A I thought it would be a waste of time.

22 Q Did Ms. Casey or Mr. Johnson ever do

1 anything to try to influence the way you were
2 handling the Hale case?

3 A No. Michael, at some point after the flap
4 with Irons, eventually began to take over more and
5 more of the management of it, or maybe before. But I
6 wouldn't say that there was anything like
7 interference or don't do this or don't do that.

8 Q The decision not to respond positively to
9 any of the plea negotiating suggestions that
0 Mr. Hale's counsel made, particularly the idea of a
1 misdemeanor plea, was your position; is that correct?

2 A That basically was my decision. You had --
3 to calculate, it was about a \$2 million fraud, a
4 lawyer and a judge. Anything less than a felony
5 would walk away without his law license and
6 judgeship.

7 I wasn't going to come off a felony. I
8 guess he realized that. So he decided to go up a
9 step. He would have known something else. I could
0 not have made any agreement without running it
1 through management anyway, so he might as well bypass
2 the middle party.

1 Q Did Ms. Casey take the same position that
2 you took when you were bypassed as the middle party?

3 A I have no idea what their discussions were,
4 what they agreed to or didn't agree, or what exactly
5 the -- what was said or what was proposed or what.

6 Q So, you only learned that later when you
7 read the letters in The Wall Street Journal?

8 A Yes, uh-huh.

9 Q You do know, do you not, what Mr. Hale
0 eventually did agree to plead guilty to?

1 A Yes. He pled to something a whole lot
2 stiffer than what he would have got out of me. He
3 could have got a two-year cap count out of me.

4 Q That was going to be my question, what he
5 ultimately pleaded guilty to was less than what you
6 were discussing.

7 A What I recommended. I couldn't do anything
8 without getting -- you can't -- you have to go to
9 the U.S. Attorney before you would enter into any
10 plea bargain, whatever it is, in a major case. It is
11 the typical bureaucracy thing. You have to cover
12 yourself, otherwise you will be in trouble. That's

1 the way it has always been.

2 I wouldn't have done anything, and Coleman
3 would have known that. He has been there before. He
4 would have known he would have had to -- I didn't
5 feel bad about being left out.

6 Q Did you indicate to Mr. Coleman that you
7 would be willing to make a specific recommendation
8 with regard to the disposition of Mr. Hale's case?

9 A Yes. I told him I wasn't going to do the
10 misdemeanor bit. There wasn't any misdemeanor to
11 fit. They did mention 5(k), to get a 5(k) motion
12 might be a possibility. But we really didn't get
13 into it.

14 Q So you didn't get into specific
15 negotiations beyond what you described?

16 A Or proffer or whatnot. It was just more or
17 less tentative and I guess his words in that letter,
18 I was kind of reluctant because you were going to
19 catch some criticism from SBA and some other people,
20 I would think, if you dealt away their case. That's
21 basically where it was left, and I didn't see it
22 again.

1 Q You testified earlier that Mr. Tucker told
2 you during the course of the negotiation --

3 MR. FISHMAN: Mr. Tucker?

4 BY MR. COLE:

5 Q Mr. Coleman told you during the course of
6 the discussion that Mr. Hale would be able to give
7 you information that would get Mr. Tucker?

8 A I think he did say that.

9 Q What did he say with regard to the
10 Clintons?

11 A Nothing comparable to that. He and I read
12 about Whitewater. You have the connection between
13 Hale and McDougal and McDougal and the Clintons. So,
14 I don't know if there was anything -- I didn't know
15 they were going to come up with the proposition that
16 Clinton is supposed to have forced Hale to make the
17 loan. I thought he might have been talking together
18 about Hale and McDougal used to spend a lot of time
19 and Hale may have told McDougal something, so you
20 would have something secondhand. That is the
21 possibility.

22 But McDougal, you are absolutely going to

1 get no matter what the circumstances were, and Hale
2 could have hinged on that one. The only other strong
3 indication he came in with was Tucker, I think.

4 Q So your understanding of what Mr. Coleman
5 told you was that Mr. Hale would be able to provide
6 specific information about criminal misconduct by
7 Mr. Tucker?

8 A And possibly the Clintons. In other words,
9 he could provide me with much more high profile
10 defendants than Mr. Hale himself.

11 Q At any time did he make reference to the
12 \$300,000 loan?

13 A No. We didn't get into specifics. At that
14 point in time, I knew about the \$300,000 loan, but I
15 didn't know where the money went.

16 Q Was that the same time that you had asked
17 Ms. Lewis to trace the loan?

18 A No. This was before. This is before I
19 went to Dallas and got the McDougal's stuff down at
20 OTS. They had all the stuff that apparently had
21 gotten waylaid in the FBI during the intervening
22 years. They had a duplicate copy. I went down there

1 and got a copy of McDougal's bank account fished out
2 it and had the \$300,000 deposit. That I think -- I'm
3 not sure when we went to Dallas, but it could have
4 been early September.

5 This was way after Coleman and I had ceased
6 to talk.

7 Q Did you get the information on the \$300,000
8 loan proceeds from Ms. Lewis?

9 A I got part of it. She traced part of it
10 for us. You will have to get more of the fiche and
11 film to get into it. It was going to take a lot more
12 time. She came up with the big items I asked for out
13 of there to see where the money went.

14 Q What were the big items that she came up
15 with, if you recall?

16 A One went to Flower Mount or something or
17 other. I don't know if that is exactly the name of
18 it. It was a loan transaction involving a bank in
19 the state of Arkansas. I think some of the money
20 went to pay International Paper, or whatever it was,
21 when McDougal bought another piece of property down
22 there. It wasn't anything really exciting.

1 But that was the information you had to
2 have to start figuring out where to go.

3 MR. COLE: I may be finished. Give me a
4 second here. Off the record.

5 (Recess.)

6 BY MR. COLE:

7 Q One final question. You testified that
8 your initial contacts with attorneys for Mr. Hale
9 were with Mr. Price and Mr. Mays; is that correct?

10 A Yes.

11 Q And then subsequently Mr. Coleman took
12 over?

13 A Yes.

14 Q Do you know why Mr. Price and Mr. Mays
15 didn't continue?

16 A No. Coleman and Price used to work
17 together. So I don't know if it was a matter that
18 Hale didn't have the money or if -- I told Price that
19 it was likely to be a very expensive case. So it may
20 have been in terms of legal fees. They may not have
21 all reached -- Hale may not have had the money for
22 the attorneys.

1 Q Let me show you a document. You mentioned
2 the documents that Mr. Leach had obtained. This is a
3 document that Mr. Leach made public, so it doesn't
4 bear a Bates stamp, but it is dated June 29, 1993.
5 It is an E-mail from L. Jean Lewis to Richard Iorio,
6 an internal RTC E-mail.

7 (Witness examined the document.)

8 THE WITNESS: This is strange. I bet you
9 anything this is Irons.

10 BY MR. COLE:

11 Q My question was going to be, do you know,
12 reading that, if you can identify the source of the
13 information set forth?

14 A My best guess would be Steve Irons. But
15 let me keep going.

16 (Witness examined the document.)

17 Q Am I correct in understanding, Mr. Jackson,
18 that you are not the source?

19 A I am definitely not the source. Pence and
20 I had a conversation after he came back. Basically
21 the conversation was for him -- he told me what the
22 department said. Basically, what I told him was to

1 not do anything with it until I figured out where we
2 were going on Hale and McDougal.

3 Q Because you viewed it as related to the
4 case you were working on?

5 A Yes. So I'm quite sure he wouldn't have --
6 Pence ain't the one to say -- he wouldn't go around
7 saying he was just going to leave this for the next
8 one, for the next kid on the block.

9 I don't know if anyone expressed
10 displeasure. Who cared?

11 Q That's fine.

12 A That would be my guess as to who it might
13 be.

14 Q Do you recall, directing your attention
15 back again to the time of the receipt of the first
16 referral in 1992, do you have any knowledge as to
17 whether the FBI, Little Rock office received any
18 direction or instruction from the FBI headquarters in
19 Washington as to what action to take with regard to
20 that referral?

21 A No. I wasn't in the loop on anything other
22 than doing one review of it one morning, one

1 conversation with Banks. That was it.

2 Q I was including in my question even after
3 the fact in discussions with Mr. Irons, Mr. Pettus,
4 others in the office.

5 A No. I don't know what occurred with regard
6 to the first referral.

7 MR. COLE: I don't think I have anything
8 further.

9 EXAMINATION

10 BY MR. GIUFFRA:

11 Q With regard to the international -- strike
12 that.

13 With regard to the \$300,000 Master
14 Marketing loan to Susan McDougal, you determined at
15 some point that some portion of that money went to
16 International Paper; correct?

17 A I think so.

18 Q Did you ever make any determination that
19 any portion of that money went to Whitewater
20 Development Corporation?

21 A The only places that I saw -- the only
22 places that she pulled up --

1 Q She is who?

2 A Ms. Lewis. I was looking for the bigger
3 items. The biggest item went down to a bank at
4 Stephens to pay on, it is like Flowerwood
5 Development, which I don't know what relationship.
6 There may have been some relationship to Whitewater.
7 As I understand, he bought the land and the title to
8 Whitewater, that's what I understand.

9 MR. FISHMAN: I think we are getting into
10 too much speculation.

11 BY MR. GIUFFRA:

12 Q Are you the most senior District Attorney
13 in the Eastern District of Arkansas?

14 A No. Richard Pence is, has been there a
15 year longer than I am.

16 Q He is the most senior?

17 A I am the oldest, if you are talking about
18 chronological age. Richard Pence is second and Ken
19 Stoll is third.

20 Q Now, Ms. Casey is still the U.S. Attorney;
21 correct?

22 A Yes.

1 Q Have you ever discussed any of the matters
2 of your testimony here with Ms. Casey?

3 A We don't talk.

4 Q Why don't you talk to Ms. Casey?

5 A We just don't talk.

6 Q Does she know you are testifying here
7 today?

8 A I assume so since she had me call him. We
9 don't talk.

10 Q Have you ever met Bill Clinton?

11 A No.

12 Q Have you ever met Hillary Clinton?

13 A Yes.

14 Q How do you know Hillary Clinton?

15 A She was on some committee with regard to
16 rules, like the local rules and so forth. They used
17 to meet at the U.S. Attorney's Office in the
18 conference room. She would be there. I wasn't on
19 any of the committees, but I met her there casually.

20 Q Mr. Coleman, would you consider him to be
21 an experienced criminal lawyer?

22 A He has done some of it. He was just on a

1 savings and loan case.

2 Q Has he ever been in a case you have been
3 involved in?

4 A No.

5 Q You have testified that there was a concern
6 in your office about bringing what might be described
7 as a "politically sensitive" case?

8 A Do what now?

9 Q Concern about bringing a politically
10 sensitive case with regard to McDougal.

11 A I didn't say that, did I?

12 Q Strike that.

13 Was there any concern with regard to the
14 handling of the McDougal matter?

15 MR. FISHMAN: At what time and by whom?

16 BY MR. GIUFFRA:

17 Q By you and Mr. Banks. Let's just take it
18 then. About the fact that this might be a
19 politically sensitive case. Did you ever discuss
20 that with him?

21 A I don't think we discussed it. What we
22 basically discussed was what the referral was about

1 and the problems caused by the first acquittal.

2 Q Did you ever discuss the political
3 sensitivity of the referral with Mr. Banks?

4 A I don't think so. As I say, I could be not
5 remembering the whole conversation, but I don't
6 recall going into anything other than a little bit of
7 what is in his letter there, kind of saying why you
8 probably shouldn't go forward with it.

9 Q Prior to the recusal of Ms. Casey, did you
10 ever discuss with anyone the political sensitivity of
11 the Hale matter?

12 MR. FISHMAN: What do you mean by
13 "political sensitivity"?

14 THE WITNESS: I discussed it with Michael
15 and with I guess Irons and the FBI that at some point
16 if you reach -- if you got into the Clintons and so
17 forth, with the public integrity section or somebody
18 would take over and we would be gone. From that
19 angle. If you got into those, if you got into that,
20 we would no longer be around.

21 BY MR. GIUFFRA:

22 Q Why would that be the case?

1 A That's my understanding, that they take
2 over things involving government officials or
3 whatever. The same reason I guess you got the
4 independent counsel. I have been told that if it
5 develops, that we do have information that the
6 Department of Justice would be replacing us.

7 Q Do you recall conversations along those
8 lines with Mr. Johnson?

9 A I think Michael told me that and I think
10 also Irons and them mentioned that, that if we did
11 stumble into the President and Mrs. President -- or
12 the First Lady -- we would in effect be getting
13 replaced.

14 Q Let me focus your attention to the
15 so-called missing letter.

16 A Okay.

17 Q You testified, when Mr. Coal was examining
18 you, that Mr. Coleman did not discuss the Hale
19 allegation that Clinton had some involvement with
20 regard to that \$300,000 loan.

21 A No. Before -- about the time Coleman had
22 left me, before that point in time, we had not

1 discussed the Master Marketing or the \$300,000, to my
2 recollection, period.

3 Q My question is when Coleman comes to your
4 office to look for the letter --

5 A Hale told him about it. Hale told him to
6 come look for it.

7 Q Did Mr. Coleman say to you, Mr. Jackson,
8 I'm coming here because my client says there is a
9 letter?

10 A He said that to me after he got through the
11 file.

12 Q He came to your office --

13 A He came to the FBI.

14 Q To look through the file?

15 A Yes.

16 Q Looked through the file, didn't find what
17 he was looking for.

18 A Then he told me what he was looking for.

19 Q What did he say to you about what he was
20 looking for?

21 A Hale told him about a letter that is in the
22 file that is from McDougal to Hale which indicates

1 that Bill, "is going to help make some payments and
2 get the Master Marketing loan current."

3 Q Bill would make payments or get the loan --

4 A He would help McDougal make some payments
5 on it. It was supposed to be Bill.

6 Q Was this supposed to be a document that
7 would in some way incriminate Bill?

8 A I assume that that's the reason that they
9 were out there wanting it.

10 Q And did he say anything more to you about
11 how this letter would incriminate Bill or how he
12 believed the letter would incriminate Bill?

13 A I guess it would tie --

14 MR. FISHMAN: Did you ask whether he said
15 anything?

16 MR. GIUFFRA: Yes.

17 THE WITNESS: I have to assume from
18 whatever I read in the newspaper that it would
19 support that proposition, that Bill forced Hale to
20 make the loan to McDougal, I guess, is their theory.

21 BY MR. GIUFFRA:

22 Q Did he say --

1 A No.

2 Q What did he say to you specifically when he
3 was at the FBI reviewing the documents?

4 A That he wanted that letter.

5 Q Did he say why he wanted the letter?

6 A No, but hell, we both knew why he wanted
7 the letter. It is for the same reason. In other
8 words, it was something that might help support the
9 position that he had been taking.

10 Q That there was an involvement by Bill
11 Clinton in this \$300,000 loan?

12 A The devil made me do all this, I was a
13 victim of all these high-powered political types who
14 forced me to give away all of the money which left
15 SBA and me holding the bag, I guess.

16 Q Was that the claim that Hale -- strike
17 that.

18 Was that the claim Coleman was making on
19 behalf of Hale in the first meeting in August and
20 then the subsequent meeting?

21 A No.

22 Q But you did discuss with him the fact that

1 this letter had some connection with Bill Clinton
2 when he came to review the documents in the office?

3 A He said there was a letter in there that
4 would somehow tie the Master Marketing into Bill
5 Clinton.

6 Q Did you ever discuss this so-called missing
7 letter with anyone in the Eastern District of
8 Arkansas?

9 A Yes. I discussed it with -- after the
10 newspaper people called me several times, I started
11 taking it seriously. I talked to Dennis MacInerny,
12 who worked for Fiske, and told him where he could go
13 look for the letter. The first place to look would
14 have been down in the exam files, if the letter
15 existed, to see if the examiners down in Dallas
16 copied it when they were doing the loan reviews. The
17 problem with Master Marketing was it was delinquent.
18 So there might be a copy of it down there. My best
19 guess is if the thing exists, Hale still has it
20 squirreled away somewhere.

21 Q So far as you know, the letter has never
22 been found?

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1 A No. It may not exist. If it does exist,
2 my best guess as to where it is is that Hale has it
3 put up somewhere and doesn't know where it is at.
4 All I can tell you is that I'm not the one who -- I
5 could have lost it, but I'm not the one who either
6 read it or took it.

7 MR. GIUFFRA: No further questions, sir.

8 MR. FISHMAN: You asked him if he talked
9 anybody in the Eastern District of Arkansas and he
10 said somebody who works for Fiske.

11 BY MR. GIUFFRA:

12 Q You didn't speak with anyone in the U.S.
13 Attorney's Office in the Eastern District of Arkansas
14 about the missing letter? Did you ever talk to
15 Johnson about it? Paula Casey?

16 A I will say this. I did go tell Ms. Casey,
17 I saw her in the hall. I told her I was going to
18 contact --

19 Q MacInerny?

20 A Yes, or Fiske's people. It was the other
21 guy that was there, Hardy. I was going to call out
22 there and tell him what Bill Simmons -- Johnson

1 wasn't around. I thought if I was going to have any
2 contact with the independent counsel, I better inform
3 management.

4 Q Who is Bill Simmons? He is the first
5 assistant?

6 A He is an AP writer.

7 Q The AP writer contacts you and you see
8 Ms. Casey in the hall?

9 A Yes, because Michael is not there. I
10 figure I better tell somebody before I make any
11 contacts with the independent counsel.

12 Q Then you contact the independent counsel?

13 A Yes, and tell them what's going on.

14 Q Between that time and when you first spoke
15 with Mr. Coleman back in August --

16 A I forgot about it.

17 Q You completely forgot about it?

18 A Yes.

19 Q Do you know when it was you spoke to
20 Mr. MacInerny about this letter?

21 A About a month -- either a month or six
22 weeks or so before Starr's outfit replaced them.

1 Q So sometime in late 1994?

2 A I'm guessing it was somewhere back then.
3 It may have been slightly before the trial on
4 Fitzhugh and Mathews.

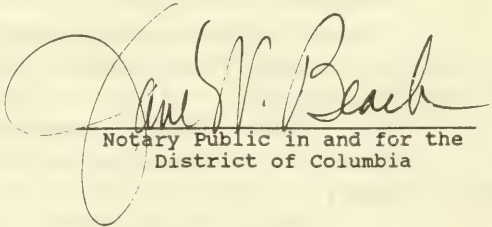
5 MR. GIUFFRA: Thank you very much.
6 (Whereupon, at 4:45 p.m., the deposition
7 was concluded.)
8
9

10 EARL FLETCHER JACKSON
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JANE W. BEACH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires NOVEMBER 14, 1996

DEPONENT ~~EARL FLETCHER~~ JACKSON

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
11	14	he was	I was	
17	6	PERSON	PROBLEM	
	16	CERT FORM	SEARCH WARRANT	
18	7	CRANE	REIGN	
20	12	HOME	HALF	
21	18	got MASON PIPPS	HAD FLOWN	
23	5	BLAME	LAME	
32	16 + 20	PLASIDY	PULASKI	
34	21	BILL	DALB -	
38	16	DECEMBER	SEPTEMBER	
41	13	OUT	IN	
	21	SOMEBODY	COLEMAN	
45	2	IT	HE	
49	18	THEY WERE HE WAS	HE WAS	
50	4	"ABOUT A MEETING"	should graft "told"	
78	11	SHOULD BE "	AND THE FBI HAD HAD "	
45	4	WAS	I	
151	15	WITHOUT	WITH	

DEPONENT

ERRATA

PAGE	LINE	CHANGE FROM	CHANGE TO	REASON
153	11	Tary	1	
154	11 & 18	"TOGETHER"	GOES AFTER "TIME"	
155	2	Hinged	HELPED	
158	9 & 14	THIS IS WHAT I SAID, BUT I THINK I AM WRONG & ANSWER SHOULD BE BOB RODDY, A.V.S.T. AS MY BEST GUESS		

Skokos & Coleman

A Professional Association

Therese C. Skokos
Randy Coleman
George J. Bequette, Jr.

3200 TCBY Tower
125 West Capitol Avenue
Little Rock, Arkansas 72201-3430

Telephone

(501) 374-1111

Telecopier

(501) 374-0662

September 15, 1993

VIA HAND DELIVERY

Ms. Paula Casey
U. S. Post Office & Courthouse
600 West Capitol Avenue
Little Rock, AR 72203

Re: David Hale

Dear Paula:

This letter is written as a follow up to our recent personal phone conversations regarding the above-captioned matter.

Fletcher Jackson of your office has previously told me that Mr. Hale will be indicted on one or more charges on the third Tuesday of September, being September 21, 1993. Since first becoming involved in this matter approximately five (5) weeks ago and being informed of this anticipated event, I have been attempting to reach some form of negotiated plea with your office without any success. It has been difficult to find a place to surrender. From our very first meeting, Fletcher expressed a great deal of reluctance to enter into such negotiations and indeed has related to me that he would not take the responsibility for making any such recommendation. I sincerely appreciate Fletcher's honesty on this matter. I told him that I wanted to meet with someone who could enter into negotiations and make a decision. As a result of Fletcher's position on this matter and with Fletcher's knowledge, I met with you last Tuesday, September 7, to discuss the same matter. There has been no real movement since our conversation.

I cannot help but sense the reluctance in the U. S. Attorney's office to enter into plea negotiations in this case. I cannot help but believe that this reluctance is borne out of the potential political sensitivity and fallout regarding the information which Mr. Hale could provide to your office, but at the same time it is information which would be of substantial assistance in investigating the banking and borrowing practices of some individuals in the elite political circles of the State of Arkansas, past and present. I can certainly understand the

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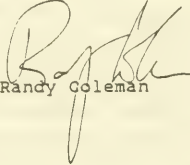
Ms. Paula Casey
September 15, 1993
Page 2

reluctance of anyone locally to engage in these matters, political realities being what they are.

Would it not be appropriate at this point for your office to consider terminating participation in this investigation and to bring in an independent prosecutorial staff, who are not so involved with the history of the personalities and circumstances of this case? Such action might serve your office better. It would certainly serve Mr. Hale better because I feel that he is being prejudiced by not being afforded opportunities that other targets of a potential criminal prosecution are afforded in the process of plea negotiations. For instance, I have offered an informal proffer of Mr. Hale's information for evaluation of its quality and content, but have received absolutely no interest in the process.

It is imperative that I hear from you on this at the earliest opportunity. Once the promised indictment occurs on September 21, the opportunities for negotiations substantially diminish in this case.

Yours truly,



Randy Coleman

ball/cas1/ac

007641

Memorandum



To : SAC, LITTLE ROCK (86A-LR-34847)

Date 10/6/93

From : SSA STEVEN D. IRONS

Subject: THOMAS W. ANDERSON;
 ET AL;
 FAG-SBA
 OO: LITTLE ROCK

On 10/5/93, writer spoke telephonically with Resolution Trust Corporation (RTC) investigator JEAN LEWIS. LEWIS contacted writer to express her hope there was no problem due to the fact referrals on Madison Guaranty Savings and Loan Association (MG) were not received by the Bureau at the end of September as she had earlier promised. LEWIS advised her investigation and referral preparation was complete and had been referred to the "PLS" at RTC, which is the legal review section. PHIL ADAMS is handling the review and dissemination. ADAMS also has the specific transactions she traced at the request of FLETCHER JACKSON of the Little Rock United States Attorney's Office (USAO).

LEWIS advised there are nine referrals on MG. Writer advised the Bureau wanted the records of MG and was not concerned about when the referral was received. LEWIS was asked when RTC would comply with the subpoena for the microfilm and microfiche of MG and replied FLETCHER JACKSON had indicated it was not needed when he asked her to trace specific items for him. Her previous understanding was the compliance date was delayed for one month, but she thought her tracing of specific items negated the need to furnish the microfiche at all. LEWIS was advised the Bureau still wanted the film and fiche, which she said was not a problem. Writer also advised the Bureau wanted to obtain all of the records of MG, to include loan files. LEWIS advised that was also not a problem, but she would be glad to do research like she did for JACKSON if we would give her specifics on the focus of our investigation. She also advised she would be glad to assist in the review of the film/fiche or other records obtained. Her offers were acknowledged, but she was told the Bureau wanted the records of MG to do its own research. She estimated the referral and the research results would be furnished to the USAO in about five days, and the film/fiche would be available shortly after that.

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On 10/5/93, writer spoke to MICHAEL JOHNSON, USAO, concerning the above conversation. Writer also noted the Bureau did not receive the referral from RTC as promised. JOHNSON advised he did not receive one either and intended to address the issue with RTC. He also advised KEN STOLL, USAO, had received a telephone call from PHIL ADAMS of RTC, who wanted to talk about the MCCOUGAL case. JOHNSON advised he intended to deal with ADAMS.

On 10/6/93, JACKSON was present in the FBI office and was questioned by ASAC and writer, in the presence of SA REIGN, as to the stance of the USAO on the film/fiche and the failure of RTC to comply with the subpoena for the September Grand Jury. JACKSON advised he was not handling the subpoena, MICHAEL JOHNSON was. He advised he did not want to make an issue of compliance since the FBI, RTC, and he would appear stupid fighting in Federal court. When writer observed sometimes an issue has to be made of noncompliance, JACKSON advised he did not operate that way and [REDACTED] had still not complied with subpoenas issued even earlier. However, the [REDACTED] items are not critical to the pending indictment and may possibly be able to be constructed from other sources, according to JACKSON.

To the surprise of the agents, JACKSON advised he issued a subpoena [REDACTED]

Writer asked JACKSON why he would do such a thing in light of the numerous conversations with him and his superiors about publicity which could unfairly indicate a possible investigation of the CLINTONS as related to Whitewater. JACKSON advised the Bureau had noted a full investigation of Whitewater Development would be necessary in a meeting with himself, JOHNSON, and PAULA CASEY. He was reminded the subject matter of the meeting was obtaining all of [REDACTED] to conduct the review ordered by the Department of Justice and FBIHQ, which was to evaluate the facts and determine if an investigation was warranted before taking public action that could be misinterpreted by the media to indicate an investigation had been opened. JACKSON was asked for a copy of all subpoenas he had issued and said FA HALL could see his secretary any time and receive them. (JACKSON later claimed to SA REIGN he had given copies of all subpoenas to the FBI except the one for [REDACTED])

JACKSON also said he had advised FA HALL of his intentions. FA HALL did notify the writer JACKSON intended to issue a number of subpoenas the previous week, but writer contacted JOHNSON to ask he review all subpoenas and give the

Bureau input in their content. [REDACTED]

0-2 On 10/6/93, writer spoke telephonically with United States Attorney (USA) PAULA CASEY and informed her of the subpoena [REDACTED] USA CASEY was not aware of the subpoena and agreed it was contrary to the agreement reached in the previous meeting between her and her staff and this office. She further agreed it was ill-advised and indicated she intended to address the manner in which JACKSON was conducting himself in this matter. / Writer also advised he felt JACKSON was attempting to be the investigator on the case and was not treating the Bureau fairly by, among other things, failing to advise of his actions and confine himself to the prosecutorial role. USA CASEY again indicated she had come to recognize his quirks and intended to take action to see they did not adversely impact this or other investigations.

USA CASEY also asked if the RTC referral had been received and was advised it had not been sent. The conversation of writer with LEWIS on 10/5/93 was related to USA CASEY. / USA CASEY was asked to ensure JOHNSON or someone in authority at her office obtain a commitment on paper from RTC as to what they are going to provide and when, which she agreed to do. USA CASEY had been occupied with the physical move of the USAO, and also has not kept current on the case due to the possible recusal aspect. However, she advised she would become involved in seeing that JACKSON understood what his proper role was.

Memorandum



To : SAC, LITTLE ROCK (86A-LR-34847) P Date 8/20/93

From : SSA STEVEN D. IRONS

Subject: THOMAS W. ANDERSON;
ETAL
FAG-SBA
OO: LITTLE ROCK

On 8/16/93, writer telephoned SSA KEVIN KENDRICK at FBIHQ, FIF Unit, to advise the Resolution Trust Corporation (RTC) had advised it would provide a referral concerning Madison Guaranty Savings and Loan Association (MG) by September 2, 1993. SSA KENDRICK was familiar with the details of the previous RTC referral received by Little Rock in October, 1992, and the circumstances surrounding it. Writer advised SSA KENDRICK this office might open a case on MG prior to receipt of the referral due to information developed in captioned matter. He was further advised captioned matter had resulted in a subject mentioning individuals common to the October, 1992, RTC referral. Writer further advised the Assistant United States Attorney (AUSA) assigned to the matter reported being told a Little Rock attorney had traveled to Washington instant date to meet with unknown officials to attempt to have the investigation quashed. SSA KENDRICK was asked to be alert for any questions from DOJ or other sources indicating interest in captioned matter or the upcoming referral. He advised he had been questioned about MG by his superiors approximately two weeks ago. SSA KENDRICK asked for a teletype and was advised one would be sent when there was information to send.

Also on 8/16/93, writer telephonically advised SSA JANE ERICKSON, GF Unit, of captioned matter, the rumored visit of an attorney to Washington, and the potential sensitivity of information a subject was claiming to have. SSA ERICKSON asked for a communication and was told one would be sent when there were additional facts. On 8/17/93, SSA ERICKSON called writer and again asked for a communication and was faxed a copy of the initial airtel and LHM provided when captioned matter was opened.

On 8/20/93, JEAN LEWIS, RTC, telephonically contacted writer seeking clarification of Federal Campaign Contribution

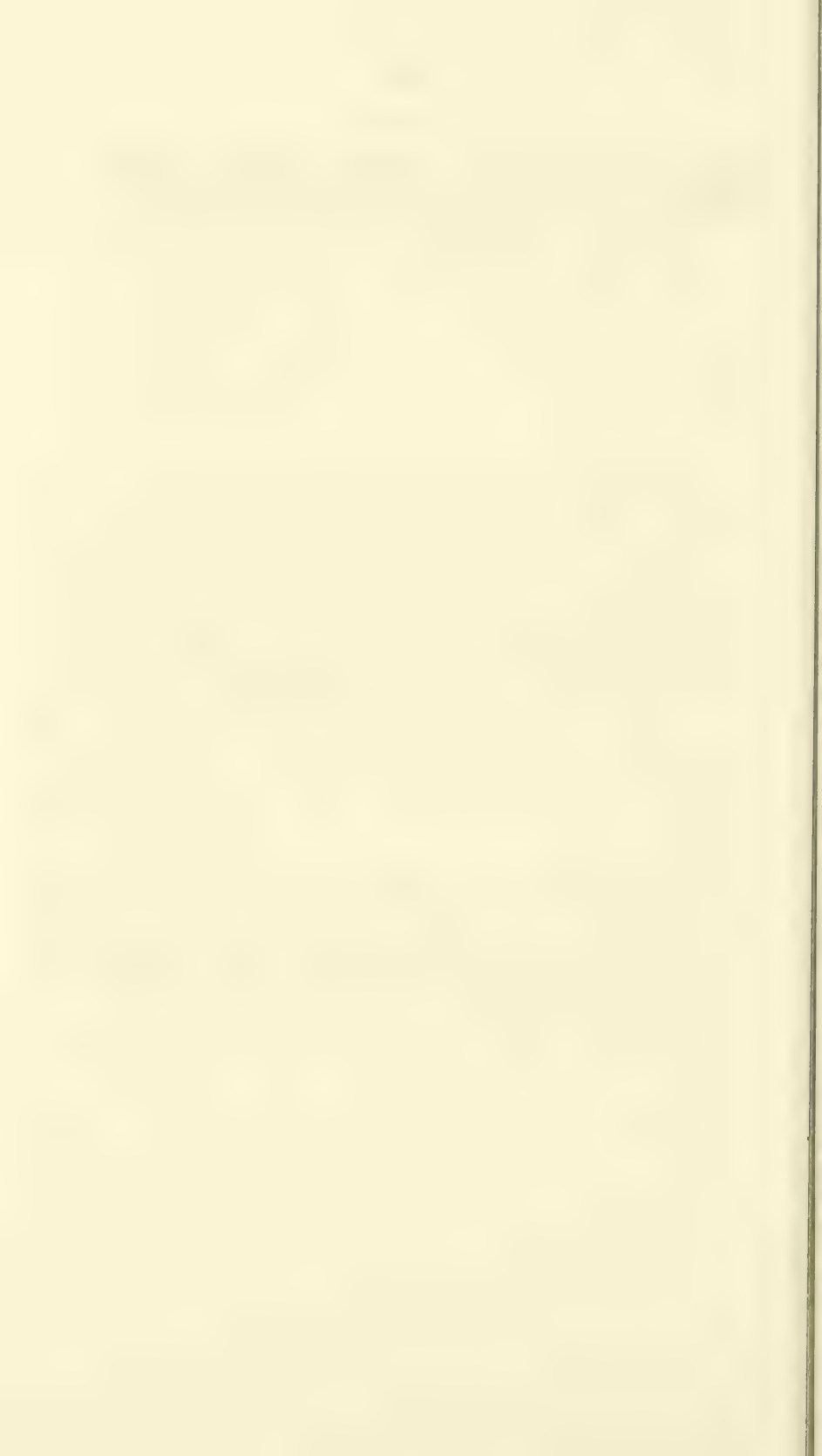
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laws and was advised he had no expertise in that area. She was advised writer would pass on her request to the AUSA FLETCHER JACKSON, whom she advised she originally attempted to contact.

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FBI 00000612



**DEPOSITION OF RANDY KNIGHT
IN RE: S. RES. 120**

THURSDAY, OCTOBER 19, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of RANDY KNIGHT, called for examination pursuant to notice of deposition, at 4:10 p.m. in Room 632 of the Dirksen Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, Esq.
Majority Associate Special Counsel
GLENN F. IVEY, Esq.
Minority Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

ALSO PRESENT: JAMES F. REDFERN
Consultant

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1 P R O C E E D I N G S

2 Whereupon,

3 RANDY KNIGHT

4 was called as a witness and, having first been duly
5 sworn, was examined and testified as follows:

6 E X A M I N A T I O N

7 BY MR. BARTOLOMUCCI:

8 Q You have just been sworn in. Before the
9 questioning begins there is some preliminary matters
10 I have to read into the record.11 This deposition is being conducted pursuant
12 to Senate Resolution 120. That resolution
13 establishes a special committee administered by the
14 Banking subcommittee to conduct an investigation of
15 Whitewater Development Corporation, and certain other
16 related matters.17 Section (1)(b)(2) of the resolution
18 authorizes investigation and hearing into, among
19 other things, whether any person has improperly
20 handled confidential RTC information relating to
21 Madison Guaranty Savings & Loan Association, or
22 Whitewater Development Corporation; whether the

4

1 Department of Justice has improperly handled RTC
2 criminal referrals relating to Madison Guaranty or
3 Whitewater; and whether RTC employees have been
4 improperly importuned, prevented, restrained or
5 deterred in conducting investigations or making
6 enforcement recommendations relating to Madison
7 Guaranty or Whitewater.8 Section (1)(b)(3) of the resolution
9 authorizes investigation and public hearings into,
10 among other things, the operation, solvency and
11 regulation of Madison Guaranty and into the
12 activities, investments and tax liabilities of
13 Whitewater.14 This deposition is being conducted in
15 advance of public hearings to be held at a later
16 date. You may or may not be called to testify at
17 those hearings.18 I will be asking you questions under oath,
19 as you know. If you don't understand a question,
20 please let me know and I will rephrase it. If you
21 need a break, please tell me.

22 The stenographer will prepare a record of

1 questions and answers. This deposition will be
2 treated as committee confidential until the
3 commencement of the hearings. Prior to the hearings,
4 you will receive a letter from the committee telling
5 you that there -- that you may come to the Senate to
6 review the transcripts of your deposition and make
7 note of any corrections of transcription on an errata
8 sheet.

9 If you are called to testify at public
10 hearing, you will be permitted to have a copy of your
11 deposition transcript four days in advance.

12 You may be represented by counsel. I take
13 it you are not represented by counsel?

14 A No, I elected not.

15 Q Objections to the form of the questions
16 will be noted for the record. Counsel may object on
17 grounds of privilege or scope. The committee
18 chairman may rule on objections if you refuse to
19 answer a question.

20 I would like to begin with some background
21 information. You are currently employed by the RTC?

22 A Yes, I am.

1 Q What is your current position?

2 A I am an investigator.

3 Q And how long have you been in that -- as an
4 investigator?

5 A 2-1/2 years.

6 Q Were you with the RTC before you became an
7 investigator?

8 A Yes, I was.

9 Q When did that employment commence?

10 A I started with FDIC in February of '89.
11 And then I converted to RTC in August.

12 Q So what -- tell me what year you became an
13 investigator for the RTC.

14 A '93.

15 Q '93. What's your educational background?

16 A I have an associate's degree in criminal
17 justice, and that's all the college that I have.

18 Q What university?

19 A Allen County Community Junior College in
20 Iola, Kansas.

21 Q What office do you currently work out of?

22 A Kansas City.

1 Q How long have you been with the Kansas City
2 office?

3 A Since August of '89.

4 Q What is the nature of your responsibilities
5 as an investigator?

6 A Right now it's -- we're just shipping
7 boxes, getting them ready to go to Chicago. As you
8 know we are closing the end of the year so the
9 investigative capacity is basically over.

10 Q Let's focus on 1993, when you first started
11 investigatory work. What were you doing then?

12 A I was a criminal investigator.

13 Q And what was the nature of your job?

14 A I was assigned institutions -- I was
15 assigned originally 23 institutions in four states to
16 review the documents, the -- examinations, et cetera,
17 to determine if a criminal referral would be
18 warranted.

19 Q And during 1993, who was your supervisor?

20 A Lee Ausen, A-u-s-e-n.

21 Q Was there anyone else?

22 A He was my immediate supervisor.

1 Q Did there come a time in which you took
2 part in an investigation of Madison Guaranty Savings
3 & Loan?

4 A Yes.

5 Q When did that start?

6 A Approximately May of '93.

7 Q May of '93 was the start of your
8 involvement?

9 A Correct.

10 Q And how did that come about, your
11 involvement in that investigation?

12 A Several of us were called together for a
13 meeting, we were told we were going to do an
14 investigation, all of us, that is, on the Madison
15 Guaranty Savings.

16 Q Who else was part of this Madison team?

17 A Lee Ausen, department head; Jean Lewis,
18 senior investigator; myself; Ed Noyes, N-o-y-e-s; and
19 Mike Caren, C-a-r-e-n.

20 Q Was it --

21 A Now, there was technical help, too, I
22 assume that that's --

1 Q Was it Mr. Ausen who assigned you to the
2 Madison case?

3 A Yes.

4 Q And growing out of that investigation, did
5 you prepare any criminal referrals relating to
6 Madison?

7 A I prepared two criminal referrals.

8 Q Did you participate in the preparation of
9 others or just those two?

10 A Other than fact-finding trips to Arkansas,
11 no. I prepared -- I worked and prepared only my
12 two. I did go to Arkansas on two different occasions
13 for documents.

14 Q Now, correct me if I am wrong, there were
15 nine criminal referrals relating to Madison which
16 were sent out of the Kansas City office in 1993; is
17 that right?

18 A That's correct.

19 Q You prepared two of them?

20 A Yes.

21 Q Did you have knowledge of the other seven?

22 A Just casual knowledge. I've not reviewed

10

1 them. I've never looked at them.

2 Q And you didn't do substantive work in terms
3 of investigating the facts which comprised the
4 referrals?

5 A No. No. Not once they were prepared.

6 Q As you began your work on the Madison
7 investigation, what information or materials did you
8 have to work with, initially?

9 A I was given an assignment, one at a time
10 from Jean Lewis and Lee Ausen, as potential targets,
11 potential referrals.

12 Q Did you have, for example, the Borrett &
13 Huggins reports on Madison --

14 A Yes, I did.

15 Q Did you have any work product from the
16 Office of Thrift Supervision?

17 A I would have had the opportunities to look
18 at examination reports.

19 Q Do you know who Wyatt Adams is?

20 A No, I am not -- I know the name but I don't
21 know who he is.

22 Q Okay. Who did you and who did the Madison

1 investigation team talk to in Arkansas in the course
2 of your investigation?

3 A In my investigation we didn't speak to
4 anybody. We visited the courthouses, I know we went
5 to Yaleville and we went to the one in Little Rock.
6 But we didn't speak to anybody in particular.

7 Q You didn't take interviews or question --

8 A I did not.

9 Q Did the team do that?

10 A I am not aware if they did or not.

11 Q Did your investigation of Madison go as you
12 expected it to? Was anything unexpected covered --
13 uncovered?

14 A I didn't have any expectations.

15 Q But you knew -- you were looking for
16 something at the beginning?

17 A Well, like I stated earlier, I was given an
18 assignment, which was targets and possible criminal
19 violations, and that's what I pursued.

20 Q When you say targets you mean persons who
21 may have been involved in wrongdoing?

22 A That's correct.

1 Q And you investigated --

2 A That's correct.

3 Q -- what criminality they may have engaged
4 in?

5 A That's right.

6 Q In the course of your investigation, did
7 you come to suspect any criminal activity which you
8 simply weren't able to document or put into a
9 referral?

10 A No. The two referrals that I read -- I'm
11 sorry, that I wrote, was the two that I suspected.

12 Q Okay. Was anyone outside of the RTC
13 involved in the discretion process that led up to
14 these referrals?

15 A Not that I was involved with.

16 Q After the nine referrals were submitted in
17 1993, did the Madison people do any further
18 investigating?

19 A I did not, and I do not know what the other
20 group did.

21 Q Did the results of your work at all
22 implicate Bill Clinton or Hillary Rodham Clinton?

1 A No.

2 Q Do you have any knowledge of, in 1986, the
3 Office of Thrift Supervision 4077 investigation?

4 A No.

5 Q Do you have any knowledge about how the
6 RTC's investigation of Madison began, at the outset,
7 back in the '80s?

8 A Would you repeat that.

9 Q Do you have any knowledge of how the RTC
10 first began to investigate Madison Guaranty?

11 A I knew it was began in the Tulsa office
12 where Richard Iorio, I-o-r-i-o, and Jean Lewis, they
13 were both at that office.

14 Q Do you know what year that was, roughly?

15 A I know there was one referral issued prior
16 to our nine, and I don't know the date.

17 Q As far as you know the investigation of
18 Madison commenced with Jean Lewis and others in the
19 Tulsa office?

20 A That is my understanding.

21 Q I take it you have known Jean Lewis at
22 least as long as you have been with the

1 investigations RTC?

2 A That's the first time I met her.

3 Q So since 1993 you have known her?

4 A Correct.

5 Q And you have stated you worked with her on
6 the Madison investigation?

7 A Correct.

8 Q Can you give us more details about how --
9 what it was you did for her in the nature of your --

10 A I didn't do anything for her. She would
11 be, by best definition, the lead investigator because
12 she was the most familiar with Madison.

13 She would act, like I say, as the lead
14 investigator. She -- she and Lee would give us our
15 assignments and if we had any questions -- or we
16 would have weekly updates, where we are at and what
17 we are finding, et cetera.

18 Q How did you feel about working with
19 Ms. Lewis?

20 A I have no problems working with her.

21 Q There was an incident that Jean Lewis has
22 related involving certain boxes in a warehouse. The

1 way she depicted the incident, she found a site where
2 there were Madison documents and she felt that some
3 boxes had been removed, or reorganized. Do you have
4 any knowledge of this incident?

5 A She -- I have heard her say that. I have
6 only visited it once, so I don't know what it was
7 previously -- she said it was neater the second
8 time.

9 Q You visited the warehouse with Jean Lewis
0 on the second occasion; the time in which she said
1 boxes had been manipulated?

2 A Yes. They appeared to be different.

3 Q Did she relay this to you during the --

4 A Yes, she made that comment during our
5 investigation.

6 Q What did you make of that comment when she
7 said it?

8 A I didn't make anything of it.

9 Q Did there come a time in 1993 when you
0 became aware that Jean Lewis, Richard Iorio and Lee
1 Ausen were placed on administrative leave?

2 A Yes.

1 Q And were you ever interviewed or questioned
2 in connection with that employment action?

3 A I spoke to special counsel in D.C. in
4 December of last year, and I also spoke to the people
5 from Office of Personnel Management in Kansas City,
6 shortly after that time.

7 Q When you say you spoke to special counsel,
8 do you mean Ken Starr?

9 A His --

0 Q His staff?

1 A His local staff here.

2 Q Okay, and the OPM Kansas City people --

3 A It was not from Kansas City is my
4 understanding. They were from D.C.

5 Q Do you remember who those persons were?

6 A Randy Michelson, I think.

7 Q Could it be Mendelson?

8 A Mendelson, yes. And then there was an
9 attorney and I can't think of his name. I would know
0 it if you said it. You guys probably know it better
1 than I do.

2 Q Could it be Thomas Suretsky?

- 1 A That's it.
- 2 Q Do you remember or recall the substance of
- 3 your conversations with Suretsky and Mendelson?
- 4 A The main gist of the conversation dealt
- 5 with the admin leave, whether I had any information
- 6 as to falsifying time sheets, travel vouchers,
- 7 et cetera.
- 8 Q Did you have any knowledge --
- 9 A No.
- 10 Q -- about those accusations?
- 11 A No, I don't.
- 12 Q Did you have any knowledge about alleged
- 13 leaks to the press made by Jean Lewis?
- 14 A Would you repeat that, please.
- 15 Q And did you relate during that
- 16 investigation any knowledge about alleged leaks by
- 17 Jean Lewis to the press?
- 18 A I have no knowledge of Jean leaking
- 19 anything to the press.
- 20 Q Is it your opinion that Jean Lewis is a --
- 21 is dedicated to her work at the RTC?
- 22 A Yes.

- 1 Q Do you believe that Ms. Lewis generally
- 2 believed that serious criminal wrongdoing had taken
- 3 place at Madison?
- 4 A Yes.
- 5 Q Do you think her investigation of Madison
- 6 was politically motivated?
- 7 A No.
- 8 Q Did you find Ms. Lewis competent in her
- 9 job?
- 10 A Yes.
- 11 Q Did she exhibit a degree of
- 12 professionalism?
- 13 A Yes.
- 14 Q Objectivity?
- 15 A Yes.
- 16 Q Are you aware of what happened to the two
- 17 criminal referrals that you prepared?
- 18 A They were shipped to the FBI and the
- 19 Department of Justice, U.S. Attorney's Office.
- 20 Q And that's what ordinarily --
- 21 A Correct.
- 22 Q That's the very purpose of a criminal

1 referral?

2 A Yes.

3 Q Did you keep track of the two that you
4 prepared?

5 A No, I did not.

6 Q Did you have an any knowledge about how
7 they were ultimately used by the Department of
8 Justice or the FBI?

9 A I know one of my referrals regarding the
0 governor of Arkansas was included in the recent
1 indictment.

2 Q Let me show the witness a document which is
3 an indictment prepared by Independent Counsel Kenneth
4 Starr in the case of United States of America versus
5 James B. McDougal, Jim Guy Tucker, and Susan H.
6 McDougal. It is dated August 17, 1995.

7 Mr. Knight, I have flagged certain portions
8 of this indictment. My question to you is, after
9 perusing this document, if you need to, and for as
0 long as you need to, it is your understanding that
1 the substance of your referral involving Jim Guy
2 Tucker was incorporated into this criminal

20

1 indictment?

2 A Yes. On the 1308 Main Street.

3 Q That was -- the 1308 Main Street referral
4 was a referral numbered 198?

5 A I do not recall.

6 Q I am going to give you a copy of criminal
7 referral number 198. For the record, this bears the
8 Bates numbers PLS 0084S, and it also has the number
9 001050, and the document ends PLS 0095S, 001061. Is
0 this the criminal referral that you prepared?

1 A Yes, I prepared this one.

2 Q Are you -- can you give us a brief summary
3 of the criminal allegations which are outlined in
4 that referral?

5 A Yes. Mr. Tucker purchased the property --
6 I don't have the dates. He kept it, seems like
7 approximately a year, he didn't make any payments on
8 it, including interest payments. The loan was for a
9 hundred percent. And then he sold it to Lisa
0 Anspaugh, who was a bank employee, who kept it a
1 while, borrowed more money on it, sold it to
2 Mr. McDougal's brother-in-law for more money, and it

1 eventually was foreclosed upon, and became Madison
2 Guaranty again, and then it was subsequently sold for
3 considerably lesser amount, what I believe to be a
4 more accurate value.

5 Q So, Madison Guaranty suffered a --

6 A Yes.

7 Q A loss on the transaction?

8 A Yes.

9 Q Correct me if I am wrong but, when Lisa
10 Anspaugh purchased the property, shortly after she
11 purchased it, she obtained a mortgage for I believe
12 \$106,000, using 44,000 to repay the original
13 mortgage, and that a balance of approximately \$75,000
14 was given to Designer Construction, a corporation, by
15 way of a Madison Guaranty check. Is that correct?

16 A It appears that the mortgage was 125,000.

17 Q 125.

18 A The closing statement shows 106,000, to go
19 to pay off a loan, the lien at Madison Guaranty.
20 49,000 was used to pay off the original lien that
21 Anspaugh assumed from Mr. Tucker, and that included
22 loan, principal and interest.

1 And 75,000 approximately was paid to
2 Designer Construction, which was a McDougal-Anspaugh
3 owned company.

4 Q Do we know why \$75,000 went to Designer
5 Construction?

6 MR. IVEY: Could we go off the record for a
7 second.

8 (Discussion off the record.)

9 MR. BARTOLOMUCCI: Back on the record.

10 BY MR. BARTOLOMUCCI:

11 Q Mr. Knight, my question is did you have any
12 idea why Designer Construction was given \$75,000?

13 A I don't recall a reason.

14 Q Was there any evidence that the property
15 was improved in some way by Designer Construction?

16 A I don't recall. I would have to read the
17 referral. It's been too long.

18 Q Do you have any idea where the profits, the
19 money that Madison Guaranty lost went, through these
20 transactions?

21 A Well, I think we've documented where the
22 checks went. That would be all I -- the only thing I

1 could comment on.

2 Q Do you happen to know how, if at all, Jim
3 Guy Tucker benefited from this transaction?

4 A He benefited by having the property the
5 length of period that he did. I would have to review
6 this to see how long that was, and he did not make
7 any payments that I can find, principal or interest,
8 so he had the use of the building for that length of
9 time, so whatever income he made, if any, would be a
10 benefit.

11 Q I am going to show you another criminal
12 referral, criminal referral number 203. Is this the
13 other Madison referral that you prepared?

14 A Yes.

15 Q Can you briefly summarize the essence of
16 what is alleged in this referral?

17 MR. IVEY: Which number was this?

18 THE WITNESS: 203.

19 MR. BARTOLOMUCCI: 203.

20 MR. IVEY: Thank you.

21 THE WITNESS: Oh, Gene Patrick Harris,
22 that's Eugene Patrick Harris, an officer of Madison

1 Guaranty, an insider of Guaranty, purchased this
2 property at 13th and Main, Little Rock, for
3 approximately \$153,000. September of '85, the
4 property was conveyed to Abernathy Development,
5 consisting of Mark Abernathy and his parents, for
6 \$203,000. Mr. Harris handled this loan. He owned it
7 and he handled the loan, so that is a conflict of
8 interest.

9 We also found evidence where he stated to
10 McDougal, who was the boss of Madison, they need to
11 keep the points low so the deal will work. Harris
12 also advised he was going to loan \$315,000 on the
13 property that he sold for \$203,000, and the actual
14 loan was \$352,000, which was 172 percent of the sale
15 price, and there is no reason given as to why the
16 extra \$147,000.

17 That is the main meat of the referral: him
18 being -- he owned the property, he was an officer, he
19 handled the loan, and there is no reason in the file
20 as to why he loaned such a great amount.

21 BY MR. BARTOLOMUCCI:

22 Q That is an amount greater than the value of

1 the property, the cost of the property?

2 A That is correct. He sold it for 203,000
3 but the loan was for \$350,000.

4 Q And it is highly improper, too?

5 A It is not normal without documentation of
6 substantial construction.

7 Q Did you uncover at all where the rest of
8 the money went or the purpose for which it was used?

9 A I was not able to determine that. The
10 daily records of the association, which we would
11 normally use to trace the funds, was unavailable.

12 Q You just stated that Pat Harris was a
13 Madison officer and insider of the thrift, and that
14 this was an example of self-healing at Madison
15 Guaranty. Based upon your investigation of Madison,
16 would you say that this is fairly illustrative of how
17 Madison was operated?

18 A I cannot say that, because I only looked at
19 this issue.

20 Q I am backtracking here, but, once again,
21 the other seven referrals that were submitted in
22 1993, you have no substantial knowledge about?

1 A No.

2 Could I take this time to make a comment?

3 Q Sure.

4 A I would like to define what my idea of a
5 referral is. When we go through an institution,
6 whatever documents that may be, we see something that
7 is irregular, or has a red flag, then we will prepare
8 a criminal referral, if warranted. It is not an
9 indictment or anything else. All it is is our or my
10 opinion that wrongdoing may have occurred, period.
11 Okay.

12 Q And at least in the case of referral 198
13 that actually became the basis for a criminal
14 indictment?

15 A It's included in the indictment.

16 Q I just have a few more questions for you.
17 Have you ever spoken to anyone in the Justice
18 Department about the 1993 Madison referrals?

19 A I don't think I've spoke to anybody, except
20 you people, regarding the meat of the referrals. I
21 have talked to the other -- like I told you before,
22 Starr's office and stuff about this -- the situation,

1 but as far as the meat of the referrals, no, I don't
2 believe so.

3 Q You have never spoken to Webster Hubbell?

4 A No.

5 Q Have you been interviewed or deposed about
6 this, this matter? You mentioned Ken Starr?

7 A I have been interviewed; I've not been
8 deposed.

9 Q Have you been requested to turn over
0 documents concerning this matter?

1 A All of us in our office has been requested
2 numerous times.

3 Q And each time you turned over whatever
4 responsive documents you had?

5 A I gave all the documents, work papers,
6 whatever I had, to Mike Caren back on the very first
7 request, which was shortly after all this happened,
8 and I've not had any documents since.

9 MR. BARTOLOMUCCI: I have nothing else at
0 this time but I would like to reserve the right to
1 ask you some more questions after Mr. Ivey's
2 questioning period if that's necessary.

EXAMINATION

2 BY MR. IVEY:

3 Q Good afternoon. Let's see, I wanted to go
4 back to the RTC with you for a moment. You mentioned
5 that Mr. Ausen was your supervisor?

6 A That's correct.

7 Q Who was Mr. Ausen's supervisor?

8 A Richard Iorio.

9 Q Who was Mr. Iorio's supervisor?

10 A He reported, I think initially, back when
11 this took place, to Jim Thompson, I think.
12 Primarily, I know he dealt with Washington, which
13 would be Mr. Dudine's office, D-u-d-i-n-e,
14 initially.

15 Q And who was Mr. Thompson, did you say?

16 A He was a vice president for the RTC office
17 in Kansas City.

18 Q Were there more than one vice president?

19 A Yes, Dennis Cavanaugh was the other one.

20 Q Was it divided between criminal and civil?

21 A No, it was -- Mr. Thompson had some of the
22 accounting functions, had an investigation, where

- 1 Cavanaugh had the asset side and that side of RTC.
2 Q So you did not report to Jean Lewis?
3 A No.
4 Q Her title was -- did she have a title
5 senior investigator?
6 A Yes, she did.
7 Q What was your title at that time?
8 A It was investigator.
9 Q Are you the most senior investigator there
10 now?
11 A No.
12 Q Who are the investigators from the -- from
13 that group in 1993 that worked on Madison with you?
14 A The investigators were Jean Lewis, Mike
15 Caren, Ed Noyes, and myself.
16 Q Who is left of that group?
17 A Well, I am left, so I guess I did not
18 understand your question, senior, you mean of the --
19 these? Well, I am the only one remaining. And the
20 title senior investigator means only that you are a
21 grade 14.
22 Q What does that mean?
-

- 1 A That's the only definition between a senior
2 investigator and an investigator is grade.
3 Q Is that the civil service step or is it a
4 different --
5 A Yes.
6 Q You are a civil servant?
7 A I am a GS, the scale is slightly different
8 than a normal GS.
9 Q So you have regular civil service
10 protection?
11 A We are considered temporary employees, so
12 we do not have career status. We are on a one-year
13 contract.
14 Q Did you ever deal directly with Mr. Iorio
15 with respect to Madison?
16 A I don't recall ever dealing with Richard on
17 a one-to-one basis. It was usually with a group.
18 I -- I have seen him all the time but I don't recall
19 ever getting instructions directly from him when
20 Ausen wasn't with us.
21 Q Now, when you became -- when you switched
22 over to the investigations in 1993, I believe you

1 said you had 23 institutions that you were --

2 A In four states.

3 Q What states were those?

4 A Ohio, Michigan, Indiana, and Kentucky.

5 Q And these were -- were most of these failed
6 institutions or all of these failed institutions?

7 A All of them would be failed institutions.

8 Q Because that was the nature of what the RTC
9 handles?

10 A Correct.

11 Q How much did Madison lose when it failed,
12 do you know?

13 A I do not have that information.

14 Q What was the size of the losses of the
15 other -- any of the 23 institutions that you --

16 A I do not recall the dollar amount on any of
17 them.

18 Q Was it your sense that Madison's losses
19 were smaller than some or many of the institutions
20 that you --

21 A Well, it was definitely smaller than
22 several of the other institutions that I worked on.

1 Q Was it significantly smaller?

2 A Of some of the institutions. I had billion
3 dollar institutions.

4 Q Billion?

5 A I had First Federal Savings of Pontiac,
6 Michigan, for instance, was approximately a billion.

7 Q Any others in the billion category that you
8 recall?

9 A I don't think I had any others that was
10 that size.

11 Q Were you working on other institutions at
12 the time you were pulled into the Madison
13 investigation?

14 A Yes.

15 Q Were the institutions you were
16 investigating institutions that had lost more money
17 than Madison had lost?

18 A Some of them would have, yes.

19 Q What was your understanding of why you were
20 brought into the Madison investigation?

21 A If I recall, it was a lot of work to do,
22 and -- and Jean couldn't do it all by herself, so

1 several of us, the ones I've listed, were assigned to
2 help her. She had all her targets identified based
3 on her research, and then she just divvied up those
4 targets.

5 Q Would it be fair to assume that you could
6 have used assistance in targeting some of the
7 institutions you were working on, like this one that
8 had lost a billion dollars?

9 A Not -- no, because it had been pretty much
10 researched pretty heavily by the Chicago office prior
11 to when I received it. There had been a number of
12 referrals already written.

13 Q How were the priorities set for determining
14 what institutions would be investigated?

15 A I -- I don't have the answer to how
16 priorities were set.

17 Q You were just assigned certain institutions
18 to investigate?

19 A That's correct.

20 Q Within the institutions you were assigned,
21 was there any prioritization of which institutions to
22 look at?

1 A No.

2 Q It was just your call?

3 A That's correct. Obviously the most recent
4 failed institution would be where I would start
5 first, unless I had other information say from civil
6 investigators or something, otherwise I would look at
7 the most recent.

8 Q Did you have -- I am referring to 1993.
9 Did you have some institutions that had failed within
10 a year or two of that time?

11 A I don't recall the dates on the failures.

12 Q Do you recall when Madison failed?

13 A I don't remember.

14 Q Were there other criteria you used other
15 than recency of failure to determine which ones to
16 investigate?

17 A I would look at internal documents prepared
18 at the time of intervention, which is when it's
19 initially put into conservatorship. We would do a
20 preliminary findings report, which was a quite in
21 depth but quick scan of the institution, and the
22 civil investigator would point out possible leads.

1 Q From the civil investigator?

2 A The civil investigator was the lead
3 investigator. We did have criminal people that would
4 go in at the time of intervention and they would work
5 together in preparing the preliminary findings
6 report. Then I would review that to determine if
7 there was any possible targets.

8 Q You had been a civil investigator before
9 you became --

0 A No.

1 Q Oh, I'm sorry.

2 How was your time budgeted with respect to
3 your work on Madison?

4 A I don't understand the question.

5 Q Well, I mean, did you work on Madison
6 full-time in 1993, or did you work on it at the same
7 time that you worked on other investigations?

8 A When I first started with Madison, which
9 was approximately May, I devoted approximately a
0 hundred percent of my time. We did have certain
1 reports that was due, say on a quarterly basis, that
2 we would have to complete, but once those reports

1 were done, the efforts would be into the Madison
2 investigation. I did not review any other
3 institutions.

4 Q So from May 1993 until when did you spend
5 approximately a hundred percent of your time on
6 Madison?

7 A When we shipped these off, and I don't
8 recall if that was October or November. I'd also
9 have to do tax support on previous referrals on other
0 institutions; when the FBI and other institutions
1 would call me I would have to do what was needed
2 there. That did not stop. But as far as my
3 investigation, it was devoted to Madison.

4 Q So from May 1993 until the referrals were
5 sent out?

6 A That's correct.

7 Q Do you know if that was true for the other
8 investigators that were working on this case?

9 A I would have to assume so. It is your
0 sense that they were not spending all of their time
1 or at least a great deal of their time, as I was. We
2 did have other things we had to do based on our

1 portfolio and report and such, but based on the
2 investigation, that was devoted to Madison during
3 that time period.

4 Q So there were, I think you mentioned four
5 investigators, you, Lewis, Noyes, and Caren, who were
6 working on this pretty much full-time?

7 A Correct.

8 Q Were there other investigators in the
9 office?

10 A Not in criminal.

11 Q So the entire criminal investigative --

12 A Oh, I'm sorry. There was -- was there
13 other people in criminal?

14 Q Right, who were not working on Madison?

15 A Yes, Richard Parks was not working on
16 Madison, who was in the criminal department.

17 Q Any others?

18 A No. That was the entire criminal.

19 Q So four out of five?

20 A That's correct.

21 Q And Mr. Ausen was providing supervision --

22 A Correct.

1 Q -- to that effort?

2 How did the investigators typically work
3 together? Did you sort of work in teams like this,
4 whenever you focused on a given institution?

5 A Do you mean aside from Madison, with the
6 normal other institutions?

7 Q Yes, sir.

8 A We didn't work in teams. We each had
9 individual assignments in criminal. Now we had civil
10 fraud and we had the civil side which also have
11 investigators, but we base -- we did our own
12 investigation. There was not teams, not on any that
13 I had done.

14 Q So --

15 A As far as criminal.

16 Q Your experience in the criminal
17 investigative -- is it a division or --

18 A It is just a department.

19 Q Department, okay.

20 Was that Madison was the only case in which
21 investigators were teamed together on one criminal
22 investigation?

1 A That's not real clear there either. We
2 were not teamed together as far as the investigation
3 of each of these targets. We did them on an
4 individual basis. There was a number of
5 investigators on the Madison team, yes. But we did
6 our own investigation.

7 Q Yes, sir, I follow you there.

8 A Okay.

9 Q But were there other investigations where
10 investigators worked together on one institution?

11 A There was not, that I am aware of.

12 Q Okay.

13 A None that I did.

14 Q Do you know why this team was brought
15 together?

16 A Like I said earlier, she had a lot of
17 targets that appeared and she could not get the work
18 done. It was my understanding that's why we were
19 brought in to do it because she had already done the
20 research and had the targets selected.

21 Q Did anyone ever communicate that to you?

22 Did Ms. Lewis say that to you or Mr. Ausen?

1 A I don't recall anybody -- I don't recall
2 the conversation, but it's -- I --

3 Q It is your sense?

4 A It is my -- yes, that's correct.

5 Q You think the notoriety of the people named
6 in the referrals might have had something to do with
7 the amount of time that was spent on Madison?

8 A Are you saying is it political?

9 Q No.

10 A Are you just saying -- say for my instance,
11 you mean the governor of Arkansas?

12 Q Yes, sir.

13 A Redo the question.

14 MR. BARTOLOMUCCI: If I may. Do you
15 understand what he means by notoriety?

16 THE WITNESS: I understand that but I
17 didn't catch the rest of your --

18 BY MR. IVEY:

19 Q I am just asking if you think -- and I am
20 asking for your opinion, if you think the reason so
21 many people and so much effort was put on the Madison
22 investigation has anything to do with the notoriety

1 of the people involved?

2 A I can't answer that. I was never told
3 that, and in my opinion -- I have no opinion on
4 that.

5 Q Do you know if your beginning work on the
6 Madison investigation coincided with any type of news
7 reports or media scrutiny?

8 A It is my understanding that Jean or our
9 office ran across an article in the Washington Post
10 or whatever that got our curiosity up, so to speak,
11 and she started researching it. I don't have any
12 proof of that but I seem to recall that happening or
13 being said.

14 And that would be very normal, any good
15 investigator would use all resources possible.

16 Q Now, when you first began working on this
17 team in May of 1993, did there come a time when
18 you -- I don't want to say were given an assignment
19 by Ms. Lewis, but you picked up part of the
20 investigation that she asked you to handle?

21 A That was initial -- that's what took place,
22 if I am understanding you right, in May I was given

42

1 the assignment.

2 Q What was the assignment?

3 A The first assignment I received was on a
4 property that Hillary had owned in Whitewater.

5 Q That would be lot 13?

6 A I don't recall the address.

7 Q Would that have involved construction on a
8 model home on the lot?

9 A It was a model home. I don't recall now if
10 it was constructed or if it was a modular or a
11 mobile, but it had to do with a model home, yes.

12 Q And did you take care of that assignment?

13 A I reviewed it, and I came to the conclusion
14 that there was -- it did not warrant criminal
15 referral.

16 Q And did you thoroughly, you know,
17 investigate and look at sources?

18 A Absolutely.

19 Q Did you tell Ms. Lewis --

20 A I told Ms. Lewis.

21 Q -- your conclusion?

22 A Ms. Lewis and Mr. Ausen my findings, yes.

1 Q What happened after you told them about
2 your findings?

3 A Jean had come up with some -- she had
4 copies of checks or something that she wanted me to
5 go back and look at and see if they tied to this
6 particular property. And I reviewed it again, and I
7 still came to the conclusion there was no criminal
8 wrongdoing, that it did not warrant a referral.

9 Q Did you go back and tell her that again?

10 A Yes.

11 Q Was it your decision -- was this supposed
12 to be a referral in and of itself?

13 A None of these were supposed to be
14 referrals. These were all targets of possible
15 referrals. And this was one target that I looked at,
16 yes.

17 Q And what was the reaction when you told her
18 that this didn't merit a referral?

19 A I don't recall her reaction. I think she
20 had found those other checks and she felt that it
21 warranted reviewing, which I did.

22 Q Did she ask you to read the documents a

1 second time?

2 A Yes, she did.

3 Q Was this the first time you came back or
4 the second time?

5 A This was -- well, there was only one time.
6 I reviewed them and I went to her and I said -- and
7 Lee, that they did not warrant in my opinion a
8 criminal referral.

9 At this point she had this -- these
10 additional documents that she thought might have to
11 do with a referral, and wanted me to review it again
12 with these new documents, which I did.

13 Q Okay. Did you receive any other targets
14 from Ms. Lewis?

15 A Yes. The two that resulted in referrals.

16 Q And how long did it take you to review
17 those two leads that she gave you?

18 A The two that resulted in referrals?

19 Q Yes, sir.

20 A I don't recall how much time was devoted to
21 it. Between June and when they were issued.

22 Q At what point in this time frame, I guess

1 between May of 1993 and the sending of the referrals,
2 did you, A, look at lot 13, and B, look at the --

3 A If lot 13 is the one that dealt with
4 Hillary Clinton, that's the first one I looked at.

5 Q So that would have been in May of 1993?

6 A Approximately May, June.

7 Q And what about the land flips that resulted
8 in referrals?

9 A I don't remember what order I looked at --
10 once I went back and reviewed additional documents on
11 the one that Hillary was involved with, then I
12 received another target. I don't remember which
13 order they were in, and I would have immediately
14 started that investigation. And then I would have
15 followed it to its conclusion, which in this case was
16 a referral, and then I would have got another target,
17 which was the last one, and I would have done the
18 same with it.

19 Q So it would have been early summer,
20 perhaps, that you would have finished both of them?

21 A I would have finished one and then began
22 the second one.

1 Q But you are not sure exactly --

2 A No, I do not recall the date. It would
3 have just been from approximately first part of June,
4 to whenever we sent them.

5 Q When did you go to Arkansas the first
6 time -- you went twice?

7 A I went twice.

8 I don't -- I don't have the exact dates.
9 It was very early in the investigation, so the latter
10 part of May, first of June.

11 Q And what about the second time?

12 A I went approximately July by myself.

13 Q The first time you went with Ms. Lewis?

14 A I met Jean Lewis there.

15 Q Now, during this period while you were
16 working on this investigation, did Ms. Lewis report
17 to Mr. Ausen?

18 A Mr. Ausen was our department head so I am
19 assuming she reported to Mr. Ausen.

20 Q Do you know if she worked directly with
21 Mr. Iorio as well?

22 A She worked with Mr. Iorio. I have no idea

1 what was said, but of course, it is a small office.

2 She would have contact with all of them.

3 Q What sort of role did Mr. Ausen play during
4 this investigation?

5 A The role of a department head. If I had
6 questions I would go ask him, he would review my
7 referrals and make his comments.

8 Q Did he set overall goals for this
9 investigation?

10 A I don't recall any goals being set
11 whatsoever.

12 Q As far as the timing, when you wanted to
13 try to complete the investigation?

14 A There may have been the timing, but I don't
15 recall what that was. It seems to me there was some
16 deadlines, target dates which we were shooting for, I
17 don't recall what they were. But that goes with any
18 investigation.

19 Q Did he make decisions as to what steps
20 would be taken during the investigation?

21 A I don't understand what you mean by what
22 steps would be taken.

1 Q Well, for example, the targets, what
2 specific targets were being reviewed?

3 A I don't know who made that decision,
4 whether he did or not. I am sure he would have made
5 the decision based on information Jean had supplied
6 him. But I was not there during any of that
7 decisionmaking process.

8 Q Did you see Ms. Lewis's testimony in the
9 House of Representatives?

10 A Recently, yes.

11 Q Did you have a chance to watch all of it?

12 A I watched all of her testimony, the two
13 days she was there.

14 Q Let me ask you a question about
15 confidentiality. Are referrals treated as
16 confidential material by criminal investigators?

17 A It is my understanding they are.

18 Q Are there policies within RTC Kansas City
19 that govern it?

20 A I don't know what the policies would be.
21 When I do a referral, it goes through my department
22 head, to Richard Iorio, and now PLS has an

1 opportunity to review them.

2 And if everybody signs off on them, then it
3 is my understanding they go to the FBI office and the
4 U.S. Attorney's Office, in whatever area it is.

5 Q Did you have any training before you joined
6 the criminal investigations?

7 A We had -- we did have -- there is a
8 training at investigations, it is like a two-day
9 deal.

10 Q Did they discuss confidentiality at all at
11 the training?

12 A I don't recall if they did or not.

13 Q Let me ask you from a common sense
14 standpoint, do you think it makes sense to keep
15 materials in a criminal referral confidential?

16 A I would have to say yes.

17 Q Why is that?

18 A Well, first of all, like I said, it is only
19 our opinion, or the author's opinion that it warrants
20 being reviewed by a much more professional, in depth
21 leg such as the FBI. It is only our opinion,
22 therefore that could be construed in the wrong hands

50

1 as allegations and they're really not. It is our
2 suspicions that it needs to be further investigated.
3 Therefore, common sense would lead me to believe that
4 they should be confidential. Because they may not
5 amount to anything. It is up to the FBI.

6 Q Might also undermine an ongoing
7 investigation, if potential targets know they are
8 under investigation?

9 A There could be all kinds of effects if
10 targets do; that's correct.

11 Q So that would be another reason to keep
12 information confidential?

13 A That would be another reason, yes.

14 Q Did you try and keep information within
15 criminal referrals that you handled or prepared
16 confidential?

17 A Everything I've done is confidential. I
18 have never spoke to the press or anybody other than
19 people I have already said.

20 Q Are you familiar with any of the policy
21 statements issued by the RTC with respect to crime
22 referrals that discuss confidentiality?

1 A I am not familiar with them, no, other than
2 what I've just heard. I don't -- recall seeing
3 them.

4 Q Let me ask you this. Did you have to sign
5 any type of agreement or confidentiality agreement
6 or --

7 A I don't recall signing that, but -- I don't
8 remember doing that, but I might have. I don't --
9 when we are hired we have all kinds of documents, and
10 I couldn't tell you what half of them were that I
11 signed.

12 Q Do you know if there have ever been any
13 repercussions for disclosing confidential information
14 within the RTC, other than the Lewis matter? We will
15 leave this off, but are you aware of any
16 circumstances where those issues have come up?

17 A No, I don't recall any.

18 Q During the course of this investigation,
19 and in the period afterwards, after the referrals
20 were sent to Little Rock, the U.S. Attorney's office
21 or the FBI in Little Rock, did you see any stories in
22 the newspapers or in the media that seemed to you

1 that they were based on confidential information?

2 A I remember reading stuff but I have no idea
3 of the time frame at this point. That made me
4 wonder. But, I -- I don't remember when it was. And
5 I don't remember what the stories were now. But at
6 the time, it seemed relevant.

7 Q Do you recall why they made you wonder?

8 A I don't recall specifically because I
9 cannot remember the articles. I would have assumed
10 it had do with stuff that I would have considered
11 possibly confidential. Statements made and whatever.

12 Q Connected with the nine referrals?

13 A Yes.

14 Q From Kansas City.

15 Was there any conversation within the
16 office about that?

17 A Do you mean organized conversation or
18 break, smoke room conversation or what?

19 Q I mean any.

20 A I remember people talking about it, yes.

21 Q What was the nature of the conversation?

22 A Accusations, that people leaked information

1 to the press and stuff.

2 Q From within that office?

3 A Yes. That was the accusations.

4 Q So this --

5 A The scuttle.

6 Q This wasn't just a thought that crossed
7 your mind alone?

8 A No, that's correct.

9 Q Was there any conversation about who might
10 have leaked the information?

11 A Well, there was rumors, yes. But they were
12 strictly rumors.

13 Q Well, what were the rumors?

14 A The rumors were that Jean leaked the
15 information.

16 Q I take it from the way you've testified
17 leading up to this that you are aware of no evidence
18 of that?

19 A I am not aware of any evidence that that
20 happened. I could not prove that.

21 Q Was this information information that was
22 known to Jean Lewis?

1 A Yes, and myself, and anybody else that
2 would have wanted to look through the files. Could
3 have been anybody in our office.

4 Q Were the people that thought or discussed
5 these rumors also criminal investigators?

6 A I don't know that they were criminal. It
7 seems to me that Parks might have said something, I
8 don't recall. He is the only other criminal. For
9 the most part I think it was just other office
10 personnel. Not anybody in particular.

11 Q Were you following the news closely at this
12 time or were these just --

13 A At that time I did.

14 Q Do you recall if these were national
15 stories or local stories?

16 A I -- gosh. There's been so many articles,
17 I cannot remember.

18 Q Were there any formal conversations about
19 leaks within the office?

20 A It seems to me that Iorio had a meeting of
21 the entire staff once. We had meetings in what we
22 called the hallway for the whole staff, and I -- I

1 don't remember exactly what he said, but the main
2 gist of it was that Jean did not leak the
3 information, and not to talk to the press, and the
4 normal stuff.

5 Q Did he say how he knew that Jean did not
6 leak the information?

7 A I don't know if he said how.

8 Q He just said she didn't?

9 A Yes.

10 Q Do you know if there was any investigation
11 that preceded that comment by Mr. Iorio about the
12 leaks?

13 A I don't recall any. But I would not have
14 any reason to know what investigations took place.

15 Q Well, you had access to that information --

16 A Well --

17 Q -- that was leaked?

18 A I don't remember what information was
19 leaked. What I said was I am not aware, and I
20 probably would not be aware, of any investigation
21 that Richard Iorio conducted unless I had done it,
22 which I was not -- I did not do.

1 Q I guess I was just leading up to the sort
2 of reasonable conclusion that if he had conducted an
3 investigation, you'd be someone he would have talked
4 to, since you had access to the information?

5 A The whole office had access to that
6 information.

7 Q So in order to do a thorough investigation
8 he probably would have talked to everybody that had
9 access to it?

10 A I don't know. You can assume that but I
11 don't know if that's true or not.

12 Q Well, if you were doing the investigation,
13 would you talk to everyone that had access to the
14 information?

15 A Probably.

16 Q About what point, if you recall, did
17 Ms. Lewis go meet with Congressman Leach?

18 A I have no idea.

19 Q Are you aware that she went to talk to
20 Congressman Leach?

21 A I am aware that she contacted Mr. Leach,
22 but I have no idea when that happened.

1 Q Do you recall if this was before or after
2 the referrals had been submitted for review to the
3 U.S. Attorney's Office?

4 A Well, I recall that it is after.

5 Q After? Do you recall if it was
6 substantially after?

7 A I don't recall the dates. I don't want to
8 have to guess.

9 Q Now, you saw her testimony, I am sure you
10 didn't commit it to memory, but I will represent to
11 you that in her testimony, she said "I met with
12 Chairman Leach" -- and you can put this in quotes --
13 "on February 18, 1994. On March 2nd, I received a
14 message from associate counsel, independent counsel
15 office, Robert Fiske," so she says, February 18,
16 1994, just to help orient you.

17 You were still in the office at that point?

18 A Yes. I was still in the office.

19 Q And she was -- was she still in the office
20 as well?

21 A Yes, she just recently left. The 29th.

22 Q Were you -- did you know in advance of

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1 that, of her meeting with Congressman Leach, that she
2 was going to meet with him?

3 A No.

4 Q Did she talk to you after the meeting about
5 why she had met with Congressman Leach?

6 A I don't recall her ever telling me any
7 reason.

8 Q Were you curious as to why she met with
9 Congressman Leach?

10 A No.

11 Q Did it strike you as unusual that she met
12 with Congressman Leach?

13 A Well, I don't know. That's hard to
14 explain. If -- I don't know if it would be unusual
15 or not, you know. If you believe so firmly in
16 something, and if in your opinion it's been pushed
17 aside, then it would be -- I would think that would
18 be something to consider.

19 Q Now, you are a careful investigator,
20 obviously; is that a fair statement?

21 A I try to be.

22 Q And you take your job seriously?

- 1 A Yes.
- 2 Q And you've submitted referrals in your
- 3 career?
- 4 A These were my first two.
- 5 Q And you submitted one other?
- 6 A One other, and then I was transferred to
- 7 civil fraud.
- 8 Q Do you know if all your referrals were
- 9 accepted by the prosecutive agencies?
- 10 A They were -- I am not aware of any that's
- 11 been declined. I've never heard that they were.
- 12 Q When did you submit the third referral that
- 13 you submitted?
- 14 A It was -- I don't have the date. It was
- 15 after the Whitewater. I don't know when it was.
- 16 Q It's been over a year?
- 17 A Yes. And I have not heard anything on
- 18 that.
- 19 Q Did you believe that the information you
- 20 submitted was accurate?
- 21 A Yes.
- 22 Q And did you believe that it accurately

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- 1 demonstrated potential wrongdoing?
- 2 A Yes.
- 3 Q Did you make any calls to the agency or
- 4 prosecutive body you submitted the referral to?
- 5 A No. I did receive a call from the FBI
- 6 agent sometime afterwards telling me that he had been
- 7 assigned it and was reviewing it and that's the last
- 8 contact I have had on it.
- 9 Q And I take it you didn't attempt to meet
- 10 with any members of Congress about this --
- 11 A No, I didn't.
- 12 Q Do you know of any other investigators that
- 13 have met with members of Congress?
- 14 A I am not aware of any.
- 15 Q At the time that she met with Congressman
- 16 Leach, were there any conversations with -- other
- 17 times when investigators had met with members of
- 18 Congress?
- 19 A I'm not aware of any.
- 20 Q So, to the best of your knowledge, this is
- 21 an unprecedented event?
- 22 A To the best of my knowledge, it is, in

1 investigations.

2 Q Now, at the time that she met with
3 Congressman Leach, that would have been after a
4 special prosecutor had been named to --

5 A I don't recall when the first special
6 counsel was initiated. I don't remember. I remember
7 meeting him, just shook hands with him, but I don't
8 remember when that was.

9 Q Well, let me ask it to you this way. Let's
10 assume that it was, let's assume a special prosecutor
11 had been named by this point, that point being
12 February 1994, I believe was the date that he gave,
13 yes, February 18, 1994. Can you think of a reason
14 why she would go meet with a Congressman when an
15 independent counsel had been named to investigate
16 this?

17 A Can I think of a reason or did she tell me
18 a reason?

19 Q No, you already told me she hasn't -- she
20 didn't tell you any reasons. What reasons can you
21 think of?

22 A Well, I mean, looking at it, maybe she

1 didn't think the job was being done; possibly the
2 special counsel had special interests, I don't know,
3 possibly could be, maybe she didn't feel comfortable
4 with the job that was being done. That's just
5 looking at it from, you know, if I -- I am just
6 trying to think of some reasons, and there could be
7 any number of reasons.

8 Q Did any of those strike you as good
9 reasons?

10 A The ones I just listed?

11 Q Yes. Do you think they are grounded in
12 fact?

13 A Well, do I think they are fact in this
14 case?

15 Q Yes, sir.

16 A I can't comment on that. I don't know what
17 her reasons were, so I don't know. You just asked me
18 to say, can I think of any reasons. That's some
19 possible reasons I can think of.

20 Q I guess I wasn't clear in my question.
21 Those are reasons you just spun off the top of your
22 head?

1 A I can't tell you what her reasons were. I
2 never asked and she never told me, that I can recall.
3 Q Do you know if she talked with anybody else
4 within the office about meeting with Congressman
5 Leach?

6 A I don't know who she spoke to about it.

7 Q Did you talk to anyone else in the
8 investigative division about her meeting with
9 Congressman Leach?

10 A Did I speak to anybody else? No.

11 Q Did you hear anybody talking about?

12 A Scuttlebutt, sure.

13 Q Did the people have any reactions to her
14 talking?

15 A A lot of people didn't like it; a lot of
16 people did like it.

17 Q The people that did like it, what were the
18 reasons that they gave?

19 A She's doing that -- that takes a lot of
20 guts to do something like that, and they feel if Jean
21 did not feel the job was being done right, it would
22 possibly be covered up, then they admired her guts

1 for pursuing it.

2 Q What about the people who didn't like what
3 she did, what did they think?

4 A Just the opposite. They didn't like the
5 exposure to the Kansas City office, thought it
6 affected them in some way, or they just didn't like
7 her, period. They didn't like her before.

8 Q Well, I will come back to that, but were
9 there any concerns about confidentiality discussed at
10 all?

11 A I don't recall any concerns. We would have
12 no concerns about that. That would not affect us,
13 unless I don't understand your question.

14 Q Well, there were referrals prepared by your
15 office, and I guess two of them had been written by
16 you, which essentially became public information at
17 that point?

18 A I don't know if they became public
19 information at that point or not. You guys, today is
20 the first time I've ever seen any user that had the
21 referrals.

22 Q Have you ever seen descriptions of what's

1 in the referrals before today?

2 A No. Most of the descriptions I hear are
3 inaccurate, so, no, I have not.

4 Q Have you ever seen reports in the papers
5 that the Clintons were witnesses in one of the
6 referrals?

7 A Not -- not in the stuff that I have read
8 but I quit reading, watching anything that has
9 anything to do with it other than the hearings is the
10 only thing I have really paid any attention to. I do
11 not pay attention to the newspaper articles.

12 MR. IVEY: Let's take a break.

13 (Recess.)

14 MR. IVEY: Where was I?

15 (The reporter read the record as requested.)

16 BY MR. IVEY:

17 Q Do you recall seeing any direct quotes in
18 newspaper articles that you'd seen at about the time
19 the leaks came to your attention?

20 A No, I don't recall seeing any direct
21 quotes. I don't recall that.

22 Q No articles with quotations mark from

1 unidentified sources?

2 A Well, they may have said unidentified, most
3 articles do.

4 Q I don't mean a quote that says Bill Smith
5 said X, but I mean a quote that --

6 A I don't recall for sure at this point.

7 Q When you were interviewed by the Office of
8 Personnel Management, did they ask you about
9 releasing of documents?

10 A I don't recall if they did or not.

11 Q Do you recall the interview, any
12 substantive interviews?

13 A The thing I remember most is asking me
14 about falsifying time sheets, falsifying travel
15 vouchers, that's what I remember the most. I'm sure
16 they would have asked me the same question, did I
17 know of any documents being released. And I would
18 have had to say no.

19 Q Did they ask you about documents being
20 released to Mr. Leach?

21 A It seems that they did ask me that. I
22 don't remember exactly how they worded it but it

1 seems to me they did. And I would have said I am not
2 aware of any.

3 Q When documents are given from the -- by the
4 RTC to some other agency or individual, I mean there
5 are normally procedures for doing it, Freedom of
6 Information, something like that?

7 A I am not involved in Freedom of Information
8 requests so I don't know what the rules or policies
9 are.

10 Q But you know you don't just walk out of the
11 office and hand people documents from files?

12 A Right, that's correct.

13 Q They would typically -- would it be handled
14 by someone above an investigator level?

15 A Yes, it would be handled by a completely
16 different department.

17 We had a department that handled FOIA
18 requests.

19 Q What about requests other than FOIA
20 requests, say like a grand jury, say you have a
21 prosecutor conducting a grand jury investigation?

22 A We comply with grand jury subpoenas.

1 Q And there was a change in the process for
2 doing that, I believe, wasn't there?

3 A Well, I don't recall a change in the grand
4 jury subpoenas, but then I really wasn't involved in
5 that. I don't recall the procedure being changed.
6 We had lots of changes but I don't specifically
7 recall that.

8 Q If you send a referral to a prosecutor,
9 U.S. Attorney's office somewhere, and you learned,
10 perhaps by phone call, from that U.S. Attorney's
11 Office or the FBI agents that are working with them,
12 that they are seeking documents, how would that
13 request normally be handled?

14 A It would come into our office and I don't
15 know who received it. All I know is when it came
16 through Lee Ausen, if it was something I had to
17 comply with, he would pass on that information to me
18 and I would gather whatever documents I was told to
19 gather.

20 Q And then what would you do with the
21 documents?

22 A I would give them back to Lee and his

1 people would ship them to wherever, I don't know
2 where they went. I don't know if they went to our
3 legal department or where they went. I know legal
4 did review them, of course.

5 Q Was there ever a circumstance where you
6 gave them directly to --

7 A Not me personally, not without Lee telling
8 me to.

9 Q And is that a sort of standard operating
10 procedure for you?

11 A I would assume so. And a grand jury
12 subpoena, obviously we are on the same team. They
13 are acting on our referral, so it just makes sense we
14 will give them whatever information they need to
15 conduct their investigation.

16 Q What about dealing with reporters?

17 A I never -- I always refused, whenever they
18 called me, to talk to them, period.

19 Q Do you know if there is any type of policy
20 about that?

21 A The policy is to refuse to talk to them and
22 give them -- Jean Jankowski handled the press at that

1 time.

2 Q Was she a press secretary for your office?

3 A She handled requests from the press and
4 media for our office, yes.

5 Q Was she in Kansas City or Washington?

6 A Yes, she was.

7 Q She was in Kansas City.

8 Were you guys located in the same suite of
9 offices?

10 A At that time, she was in the same building
11 that we were in.

12 Q Did there ever come a time when any of your
13 supervisors discussed the press contacts? I know you
14 mentioned a meeting about leaks, but --

15 A The meeting was with RTC investigative
16 staff. Iorio conducted to us, only us.

17 Q Did Iorio say don't talk with the press?

18 A Yes, forward them on to Jean.

19 Q What is your opinion of the giving of the
20 documents to Congressman Leach?

21 A My opinion?

22 Q Yes, sir.

1 A I would not have done it.

2 Q Why?

3 A Because I wouldn't want to go through what
4 she's gone through; I wouldn't have the guts to do
5 it. Unless something was directed at me or my
6 family, I would -- personally I would not ever pursue
7 it that hard. I look at a referral, and when I am
8 done with it, I ship it off. Whatever happens, I
9 really don't care because my job is to do referrals,
10 period. And that's just my opinion personally. I
11 would not have done it.

12 Q Do you think there are some people that
13 disagreed with her decision to give the documents?

14 A Sure. Absolutely.

15 Q You mentioned that there were some people
16 that didn't like her. But do you think that some of
17 those people had valid concerns?

18 A I don't know what valid concerns anybody
19 could have because it did not affect them. I guess
20 morally, yes, they would have some concerns.

21 Q Just from a policy standpoint?

22 A Sure, yes, that's correct.

1 Q Because I suppose you could say that if
2 people disagree with some part of the process you
3 might not necessarily want them to start releasing
4 documents to members of Congress or the press or
5 whatever?

6 A That's correct. Right.

7 Q That might create problems with conducting
8 investigations and just running the organization,
9 period; right?

10 A Yes.

11 Q Have you seen any employees terminated from
12 RTC for things like misusing postage?

13 A Yes.

14 Q Would you consider that a fairly minor
15 infraction?

16 A Yes.

17 Q Would you consider this releasing of
18 documents more significant than misusing of postage?

19 A In the instance of the postage that I
20 recall, yes, I would have to say this is worse.

21 Q Now you said there were some people that
22 didn't like Ms. Lewis in the office?

1 A Yes.

2 Q These were other criminal investigators?

3 A This was just office as a whole. It didn't
4 follow any logical criminal/civil, civil/fraud
5 lines.

6 It appears in the office there's three
7 groups: people that like and support her, people
8 that do not like her, and those that don't care
9 either way.

10 Q The people that support her would be?

11 A Small group.

12 Q Would Mr. Ausen be in that group?

13 A Sure.

14 Q Mr. Iorio?

15 A Mr. Ausen, Mr. Iorio, yes, Ed Noyes.

16 Q And you like her, too?

17 A I like her personally but that doesn't
18 necessarily mean that I agree with what she does.

19 Q Well, I will come back to that. I am glad
20 you draw the distinction between sort of a personal
21 like and sort of professional concerns that this has
22 raised.

1 Now the people that didn't like her, did
2 these people say things that led you to feel that
3 they disliked her?

4 A Well, there was remarks made, sure, that
5 just like in any office, no different than any other
6 office anywhere.

7 Q Is there a woman named Julie Yanda in the
8 office?

9 A She is the head of our professional
10 liabilities section. She is not in our building.

11 Q Is there any tension between Ms. Yanda and
12 Ms. Lewis?

13 A I did not witness any, no. I have just
14 heard rumors.

15 Q What were the rumors you heard?

16 A That they did not get along at all.

17 Q Was there any professional basis for that,
18 or didn't like hair color?

19 A No, Julie is in charge of PLS, and I think
20 it started with the Madison deal, because this was
21 the first time that PLS reviewed these in advance,
22 and that caused friction. These nine referrals they

1 reviewed prior to them being sent.

2 Q Were there other people that had any
3 tension or antipathy for Ms. Lewis?

4 A Sure. There's a lot of people that did
5 not -- did not appear to like her.

6 Q Well, aside from again -- I don't want to
7 get into personalities. I don't know her personally
8 or if she had an abrasive personality or something
9 like that, and I am not real interested in that at
10 this point. I am just trying to find if there were
11 any professional conflicts I guess is the --

12 A There was people that didn't agree with
13 what he did. Thought it was wrong. Thought it was
14 very severe, and things that if they would have done
15 they thought their treatment might have been
16 different.

17 Q In what way?

18 A I had heard a couple of comments, "if I
19 would have done that, I'd have been fired," that kind
20 of comments. And I don't recall who I heard this
21 from.

22 Q And that refers to taking documents to

1 Congressman Leach?

2 A Correct.

3 Q Were any of those types of comments made by
4 people in the criminal investigations office?

5 A I don't recall if -- that only leaves one
6 so that's really kind of -- I don't know. I don't
7 believe he liked her very well, and he may have made
8 those comments because when you say anybody in
9 criminal that only leaves one other person; it is
10 kind of unfair.

11 Q You are saying that you have already listed
12 the four other people that liked her?

13 A There might have been others that liked
14 her, that's the four you basically --

15 Q Let me broaden it, then.

16 A Yes.

17 Q Maybe you can help me broaden it. What's
18 the next biggest unit?

19 A The investigations as a whole.

20 Q The investigations as a whole?

21 A Okay.

22 Q And you guys were all in the same building

1 together?

2 A Right.

3 Q We are not trying to ask you to --

4 MR. IVEY: Can we go off the record for a
5 second.

6 (Discussion off the record.)

7 MR. IVEY: Let's go back on the record.

8 BY MR. IVEY:

9 Q Within the investigations branch, you were
10 saying that there were some people who thought this
11 was -- who had troubles with what she had done with
12 respect to --

13 A Yes, that's correct.

14 Q And you said that some people thought that
15 if they had done that they would be fired?

16 A That comment had been made several times,
17 yes.

18 Q I just wanted to get you to, if you
19 could -- did they mention any reasons why they had
20 trouble with it?

21 A Well, some of them that I can remember, it
22 was -- it's against policy, it's against common

1 sense. And they have a problem with that, and they
2 have a problem with it, because it happened and there
3 was no repercussions. They didn't feel that that was
4 fair.

5 Q So you are saying they felt that she got
6 special treatment?

7 A Yes, that's correct.

8 Q Was there someone in the office named
9 Robinson?

10 A Pat Robinson.

11 Q Who was Pat Robinson?

12 A He at that time was the department head of
13 civil investigations who subsequently became like an
14 assistant director, right below Iorio. We had two of
15 them. We had him and Mike Van Vaulkenberg, V-a-n
16 V-a-u-l-k-e-n-b-e-r-g.

17 There was Iorio here and Mike and Pat was
18 right below him. And for instance, Pat had the civil
19 fraud, the civil fraud and the criminal
20 investigations, Mike had the civil investigations and
21 admin, I believe. But at the time this happened, Pat
22 was a department head in civil.

1 Q Did he have dealings with Ms. Lewis at all?

2 A I don't -- I don't know if he personally
3 had any dealings with her.

4 Q I mean just professionally?

5 A I am sure he would have. Yes, it is a
6 small office. He was a boss although he was not her
7 boss.

8 Q Did you see any incidents or evidence of
9 any professional tension between Robinson and Lewis?

10 A Yes. I -- they did not get along well at
11 all; they did not like each other period. I remember
12 an incident, hearing about an incident, I did not see
13 it, that he took it upon himself to go through some
14 of her files when she was not there, looking for
15 documents. I don't know what it was, and when it
16 was, but it was before I got there. I just heard
17 about it.

18 Q That was before you arrived in -- was it
19 May --

20 A March.

21 Q March '93.

22 Did you know if there was any repercussions

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1 about that, did you hear anything else about that?

2 A I don't know about that specific, but I
3 think from that point on, they did not get along at
4 all. They chose not to -- they just didn't
5 associate.

6 Q There came a point when Ms. Lewis was taken
7 off the Madison case?

8 A Yes. I remember that happening.

9 Q Do you recall about when that was?

10 A No. I don't -- I cannot speculate. It
11 was -- I cannot remember when it was.

12 Q Okay, that's fine.

13 Did you hear anything about why she was
14 taken off the Madison case?

15 A It seemed to me that her and Karen
16 Carmichael, who was the PLS criminal coordinator, had
17 some problems, and they were both taken off of
18 Madison.

19 Q Can you tell me what does a criminal
20 coordinator do? What is the role of a criminal
21 coordinator?

22 A She reviews criminal referrals or she

1 assists -- she is on the criminal part as opposed to
2 civil. She works with the criminal investigators on
3 their -- in their job.

4 Q Was this the layer of review that was
5 added?

6 A No.

7 Q This preexisted that?

8 A Yes, Karen Carmichael as criminal
9 coordinator was there when I first came. This other
10 thing happened at the time that Madison was being
11 sent out.

12 Q Did you know or hear about what their --

13 A I don't recall what the problem was. I do
14 not remember.

15 Q Okay, and did you hear anything about why
16 she was removed from Madison, she being
17 Ms. Carmichael?

18 A I never heard anything official of why
19 either one of them were taken off.

20 Q But this happened about the same time, they
21 were both taken off?

22 A It is my understanding it happened at the

1 same time.

2 Q How did you get along with Karen
3 Carmichael?

4 A I get along fine with her.

5 Q What, to the best of your knowledge, what
6 did Ms. Lewis do after she was removed from the
7 Madison case?

8 A I have no comment. I don't know what she
9 was doing.

10 Q Do you know if she worked on Madison at all
11 after that?

12 A I know that she was working on some kind of
13 a log, a record of events and times.

14 Q Sort of a chronology?

15 A Yes. She was working on that. And I
16 believe she transferred that to Ed Noyes to do, I
17 think, and then I don't know how long that went on.

18 Q Do you know if she generated any other
19 referrals, other than the Madison referrals?

20 A I am not aware of any, but that doesn't
21 mean she didn't. I don't know.

22 Q Just not to your knowledge?

1 A To my knowledge. Now that's after
2 Madison. I know she did do some prior to Madison.

3 Q Yes, I understand she had been there for a
4 number of years before. I meant afterwards.

5 A I don't know what she did afterwards.

6 Q You said she transferred some of it to
7 Mr. --

8 A Ed Noyes, the log, the diary, whatever it
9 was, the time lines, and I think Mike Caren handled
0 the day-to-day litigation support, such as helping
1 the FBI, the U.S. Attorney for documents and that
2 type of stuff. He became the contact person in our
3 office.

4 Q Do you know if she did anything other than
5 Madison during that period?

6 A I'm not -- I don't know what she was
7 doing.

8 Q Do you recall at what point the -- the
9 Justice Department sent Mr. Mackay to Kansas City?

0 A I don't remember when it was. I just
1 remember meeting him in Richard Iorio's office for
2 just a brief second. I don't recall when that was.

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1 Q Did you know a woman named April Breslaw?

2 A I know who she is but I have never met her.

3 Q Were you aware of her coming out to Kansas
4 City?

5 A No, I was not aware at that time.

6 Q But you learned subsequent?

7 A Yes.

8 Q At the time -- well, just in hindsight, do
9 you recall any big stir or conversations at around
0 the time that she came out?

1 A I don't recall hearing anything until the
2 hearings of last year took place. That's when I
3 first became aware of the tape.

4 Q So you didn't hear anything about pressure
5 from Washington?

6 A No.

7 Q Her coming out to --

8 A No, I did not even know she was there.

9 Q Do you recall a conference call with Carl
0 Gamble and Mr. Dudine?

1 A Yes, I sat in on one of those. We just
2 went over each of the nine referrals.

1 Q And both of Mr. Gamble and Mr. Dudine are
2 in Washington?

3 A Yes.

4 Q Did you talk about anything other than
5 simply reviewing the nine referrals?

6 A I don't remember what all they discussed
7 other than they went over the referrals. I don't
8 recall what else we went into. I just remember we
9 all met in the conference room and put it on the
10 speakerphone. I don't remember anything other than
11 we went over referrals, and the only reason I
12 remember that is when we came to mine Carl said it
13 was self-explanatory so we didn't have to talk about
14 it. That's the only reason I remember that.

15 Q During the course of that conversation, do
16 you recall anything inappropriate or improper being
17 said by Mr. Gamble or Mr. Dudine?

18 A Nothing stands out, I don't recall.

19 Q Do you recall them saying we're
20 uncomfortable about the referrals because they deal
21 with --

22 A I don't recall him saying anything like

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1 that.

2 Q Do you recall any types of pressure about
3 the referrals --

4 A No.

5 Q -- with respect to how they should come
6 out?

7 A No, but if I remember right that meeting I
8 sat in on, they had already been out, I thought. I
9 thought they had already been shipped. I may be
10 incorrect but it seems to me I remember having the
11 conference call wondering it is kind of useless to
12 have it because we have already shipped.

13 Q So there was nothing about it that struck
14 you as --

15 A No.

16 Q Let me ask you about the PLS review of
17 referrals. I take it that began somewhere in the
18 fall of 1993?

19 A That began about two weeks prior to the
20 Madison ones. Madison was the only -- the first ones
21 that that had ever happened on, to my knowledge.

22 Q Do you recall hearing any conversations as

1 to why the PLS review was added?

2 A I don't recall any factual conversations.

3 Q Do you recall any -- well, did you ever
4 hear any complaints, or that some U.S. Attorney's
5 Offices had complained about the disparate quality of
6 referrals that they received?

7 A I never heard that.

8 Q Did you ever hear any complaints or about
9 any complaints from the U.S. Attorney's Offices?

10 A I did not, no.

11 Q Let me finish the question.

12 A I'm sorry.

13 Q -- about the nature of the offenses that
14 were raised in referrals? In other words, that
15 charges were checked off in the boxes on the front
16 but maybe there wasn't enough evidence in the body of
17 the referral to support that?

18 A I had never heard that, no.

19 Q Is it fair to say you didn't hear much
20 feedback one way or the other from U.S. Attorney's
21 Offices about referrals?

22 A That's fair, yes.

1 Q Did you take a look at the PLS review?

2 A I looked at the two that I did, just --
3 that's all that I reviewed was the critique or
4 whatever of my two. That's the only ones.

5 Q And what were your reactions?

6 A Well, if I recall they were pointing out a
7 lot of what-if's, well this could have happened, this
8 could have been justified, and I did not take offense
9 by it because that's very possible it could have
10 happened.

11 Q Did that seem reasonable to you?

12 A My two did, yes.

13 Q Did you learn or did you hear that PLS
14 review was sent out with the referrals?

15 A I heard that it was, but I can't say that
16 it was. I don't know. I just heard that it did
17 accompany.

18 Q Did it trouble you that --

19 A No, I would think you should include them.

20 Q Why is that?

21 A Because if I was an FBI agent, that just --
22 they can include that in the investigations. Maybe

1 they agree with the PLS. Maybe this could have
2 happened on this referral. So I see nothing wrong
3 with sending it. I mean it's -- we give our side,
4 here is PLS, I think they should be entitled to all
5 the information, that being the FBI and U.S.
6 Attorney.

7 Q It might be useful for them to see the
8 alternative scenarios?

9 A Sure. Sure.

10 Q Did you ever come across anything in the
11 review that discussed the need for further
12 investigation with respect to your referrals or any
13 of the nine?

14 A I only saw and reviewed the ones that was
15 on mine. I did not read any of the other critiques.
16 I don't know if it said need further review or not.
17 I am assuming it does, because that would be logical,
18 but I don't remember what it said exactly. I just
19 remember all the stuff that was in there made sense
20 and it was reasonable. There was nothing
21 unreasonable about mine.

22 Q Have you ever heard of the blue ribbon

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1 manual?

2 A Yes.

3 Q What is the blue ribbon manual?

4 A It's a policy manual for investigations
5 department. It primarily deals with civil fraud, but
6 it is -- it is kind of our bible, and it does have
7 criminal in it, it is just not as detailed as civil.

8 Q Does that manual discuss confidentiality?

9 A To be honest with you, I don't know whether
10 it does or not.

11 Q Has it been a while since you reviewed?

12 A Yes, 2-1/2 years. We go over that manual
13 in depth when we are hired. We all have to take this
14 two-day, three-day, whatever it was, conducted by
15 Mike and Pat.

16 Q That was the training session?

17 A Yes, and it is that manual, they go over
18 it.

19 Q Were you aware of Ms. Lewis making phone
20 calls to U.S. Attorney's Offices about any of the
21 referrals that were submitted?

22 A I am not aware of her doing that, no.

1 Q Did Ms. Lewis review your referrals?

2 A Yes.

3 Q Did she attempt to make any changes in your
4 referrals?

5 A She would always list her comments, and
6 there was a point that she did make substantial
7 changes, attempted to make substantial changes to it.

8 Q Attempted, so you didn't adopt the changes
9 she --

10 A No.

11 Q Do you recall what types of changes she
12 sought?

13 A No, I don't recall what changes they were.
14 I just took offense by it at the time, and they did
15 not get incorporated.

16 Q Let me ask you about the trip to Little
17 Rock that you made when you met Ms. Lewis there to
18 review documents. Now, I think you said that she had
19 commented on boxes being missing or moved around?

20 A I think she -- if I remembered right it was
21 cleaner than it was last time than it was, and there
22 was less documents there than there was in the past

1 when she was there.

2 Q Did she draw any inferences from that?

3 A I don't recall if she did.

4 Q I recall from your testimony that you
5 didn't either?

6 A No.

7 Q Did there come a time when you met with an
8 employee at Capital Bank with respect to those
9 records?

10 A We did meet with somebody at the bank, a
11 lady that worked at Madison prior to being assumed,
12 and I guess Capital is the one that assumed them, I
13 don't recall the name of the bank. It is at the old
14 Madison Bank building. And she said there was a
15 number of those records on site there, and on site
16 was that bank, in the basement.

17 Q Did you have access to those records?

18 A I surely would have, yes.

19 Q Was there any request to see them?

20 A No.

21 Q Did you feel that you needed to see them to
22 complete your investigation?

1 A I was leaving that up to Jean. Whatever
2 Jean thought we needed, that's what we were going to
3 review, because I was brand new in that department.

4 Q So she decided apparently --

5 A Apparently she didn't need to see them.

6 Q Were you aware of any documents that you
7 were looking for but were denied access to before you
8 prepared your referrals?

9 A No, I am not aware of any documents that we
10 were denied.

11 Q Then after you gathered all your
12 information together, you began writing the
13 referrals?

14 A Yes.

15 Q Now, during the time that you were writing
16 the referrals, did you have any meetings with the
17 other investigators?

18 A We met on at least a weekly basis, maybe
19 more often if needed, but at least on a weekly basis,
20 just kind of updating where we're at, just routine.

21 Q At any of those meetings, were
22 determinations made about the direction of any of the

1 referrals?

2 A What do you mean?

3 Q What charges might be raised?

4 A That would have been discussed throughout,
5 yes.

6 Q Suspects?

7 A Sure, that would have been discussed.

8 Q Were the Clintons discussed at any of these
9 meetings?

10 A They were mentioned like on the one that I
11 -- my initial target, Hillary, was.

12 Q Was there any discussion about whether they
13 would be included in any of these referrals as
14 suspects, that you are aware of?

15 A I don't recall that happening, no.

16 Q Was there any discussion about whether they
17 would be included as witnesses?

18 A It seems to me -- now I am just trying to
19 recall. I don't remember. It seems that they could
20 have been included as witnesses, but for whatever
21 reason, I can't remember why they were not, like if
22 we'd have included them, that would have been on our

1 national database, which would have been opened to
2 all FDIC or RTC offices nationwide, if we would have
3 listed them as a suspect.

4 Q I am not familiar with that database; what
5 would be the significance of that?

6 A Well, it would -- then anybody in RTC could
7 review it in any office in the country, that
8 information.

9 Q So there was a concern about this sensitive
10 information being disseminated?

11 A Yes.

12 Q And did that strike you as a reasonable
13 concern?

14 A Yes.

15 Q Now, after you finished writing your
16 referrals I take it you went on to your other work?

17 A Yes.

18 Q Did you ever participate in anything with
19 respect to Madison again, at that point?

20 A I don't think I ever had anything else to
21 do with it. I think that's pretty much it.

22 Q Now in the change of the PLS, you know, in

1 PLS becoming part of the chain of review for
2 referrals before they were sent out, I take it that
3 changed the relationship, again not personally but
4 professionally --

5 A Yes, it did.

6 Q Structural?

7 A It did change it structurally.

8 Q Does that mean that in a sense PLS was
9 placed above investigations?

10 A That's my understanding.

11 Q Did that generate any tension between the
12 people heading PLS and the people heading
13 investigations?

14 A It might have. I would not have that
15 information, because it did not affect me. My boss
16 remained the same.

17 Q You kept passing your work up to your
18 immediate supervisor?

19 A That's correct.

20 Q Did you have any problems with the people
21 at PLS, personally or professionally?

22 A No.

1 Q Did you ever get the sense that they were
2 trying to undermine or impede any of your
3 investigations?

4 A Never.

5 Q Did you get that sense about the referrals
6 connected with Madison?

7 A I didn't take it that way. I thought being
8 they are of a sensitive nature they were just trying
9 to be very cautious, that's how I personally looked
10 at it, but that's me personally.

11 Q Did you take it or did you view the people
12 in PLS as, you know, conscientious workers just like
13 you?

14 A Yes.

15 Q Did you think that they were dedicated to
16 their work?

17 A I -- I would have to assume so. I have no
18 reason to believe otherwise. I never -- they never
19 struck me as being anything but that.

20 Q Did you ever sense that they were
21 politically motivated in what they were doing?

22 A Politically motivated, no.

1 Q Did you feel that they were trying to be
2 objective in their work?

3 A Yes, I just think they were probably just
4 being overly cautious.

5 Q But not maliciously so?

6 A No.

7 Q Did you ever hear any concerns about the
8 U.S. Attorney's Office in Little Rock not getting
9 documents from RTC in Kansas City --

10 A I remember hearing that, yes.

11 Q Tell me what you remember.

12 A I seem to recall a list of documents that
13 was requested, and we compiled, did not match up with
14 what was shipped. There was documents missing. I
15 just remember hearing something like in that area.

16 Q But again nothing malicious was going on?

17 A I don't know what the reasoning would be.

18 Q Let me rephrase.

19 Did you have any sense or any evidence if
20 anyone was doing this to try and delay or impede the
21 investigation?

22 A I have no evidence of that at all, no.

1 Q What was done in response to that? Was
2 there any type of reaction?

3 A I think, if I recall, a set, a complete set
4 was sent by our office, with all the documents
5 included.

6 Q Do you know if there were any meetings
7 between your office and members of the Justice
8 Department to address this issue?

9 A To my knowledge, I was not involved in any
0 and I don't recall hearing of any.

1 Q Now, Mr. Knight, I take it that you, as an
2 investigator, try and put your political views aside
3 when you address an investigation?

4 A Yes.

5 Q You go by the evidence?

6 A Absolutely.

7 Q And I take it that all the investigators in
8 your office would try and do that?

9 A I would hope so.

0 Q Are there people in your office that have
1 expressed strong political views during your time
2 there?

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1 A Yes, they have. That's normal.

2 Q Oh, yes. I am not saying that's abnormal.

3 A It is everywhere.

4 Q Are there any people in your office who
5 have expressed strong dislike for the Clintons?

6 A Sure.

7 Q Are any of them criminal investigators who
8 worked on the referrals?

9 A Ed Noyes was a very vocal and very staunch
0 Republican.

1 Q I am not trying to get his staunch
2 Republican -- did he express dislike for the
3 Clintons?

4 A Politically, yes.

5 Q Do you recall what types of things he said?

6 A No, no, I don't recall any specific
7 instances. It's just normal stern Republican
8 comments, same as it would be stern Democrat
9 comments. It doesn't matter what they do, they don't
0 like them. Strictly politics period. I do not
1 recall any comments, specific.

2 Q Okay. Do you think he was very focused on

1 the Madison investigation?

2 A I think he's very -- he was focused and I
3 don't think -- I don't believe it was politically --
4 because first of all, it is not his decision; he is
5 not the boss.

6 Q Let's leave the politics aside. Do you
7 think he was very zealous in this investigation?

8 A I think he was very -- define zealous as it
9 applies here. You mean enthusiastic? I mean --

10 Q Okay, enthusiastic, do you think he was
11 enthusiastic?

12 A Yes, yes.

13 Q Do you think he was very carefully focused
14 on this investigation?

15 A I -- I can't answer that. I'd assume he
16 was carefully focused.

17 Q Do you think he was more enthusiastic about
18 this investigation than others you have seen him deal
19 with?

20 A Yes. I would have to say so.

21 Q And what about Ms. Lewis, do you think she
22 was --

1 A I had never seen her do any others. I know
2 she was very aggressive on these. Times were when it
3 was very tense around there. I never saw her do any
4 others. All I know is this took up 110 percent of
5 her time and mine.

6 I am just saying she devoted -- and it was
7 very important to her. She worked -- it devoted
8 her -- it was her life at that point.

9 Q Given the amount of time she put into it,
10 and external things she did, like going to see
11 Congressman Leach, it is clear that she was very
12 zealous in this --

13 A I would say yes.

14 Q Would you say she was overzealous?

15 A For me personally, I would say yes.

16 Q I had a couple of things I wanted to go
17 back to. I noticed in reading your referrals that
18 you didn't have editorial comments in the body of the
19 narrative of your referral. Is that your standard
20 practice to try to stick to the facts?

21 A My style is short and sweet, here is the
22 documents, this is what I -- here is what the

1 documents tell me. And that's the way I do it.

2 Q And in writing your referrals you try and
3 avoid guilt by association types of comments?

4 A Yes, I try to look at just what the
5 documents say, period.

6 Q So the fact that some -- like one target,
7 for example, may have known another person doesn't
8 necessarily connect that person to criminal activity?

9 A No, it does not.

10 Q In your view, is it appropriate to put
11 editorial comments in a narrative of a criminal
12 referral?

13 A Personal editorial comments I don't think
14 belong there. Now, they may have to explain how they
15 arrive at something, I can understand that; but I
16 don't believe in any editorial comments, not personal
17 editorial. The facts should -- the documents should
18 verify the facts. But again that's my style.

19 Q Yes, sir. Are you aware of any type
20 involvement from people in the White House with
21 respect to the nine referrals that you
22 participated --

1 A I am not aware of any contacts.

2 Q Did you feel that the request for legal
3 review of the criminal referrals by the PLS was a
4 manipulation of standard procedure?

5 A It was a change of what was at that point
6 standard procedures, but I really deep down believe
7 it had to do with sensitivity of these, and just the
8 overcautiousness. I do not think they were trying to
9 impede them. I think they were just being
10 overcautious, due to the sensitivity.

11 Q And given what you know about the
12 involvement of PLS, and the movement of the
13 referrals, you think that there was an effort to
14 control, manipulate or obstruct the Madison
15 investigation?

16 A No, I do not.

17 Q Let me just clarify something. After PLS
18 assumed this new role, did you still interact with
19 prosecutors seeking documents during their grand jury
20 investigation process?

21 A There was no changes for me personally in
22 that. It remained the same to me.

1 Q So the grand jury subpoena came to RTC --

2 A By the time it came to me it had already
3 been through whatever, and Lee Ausen, my boss, would
4 have given it to me and told me to get these
5 documents, so from that point of view it did not
6 change at my level.

7 Q You still got the documents together and
8 gave them to your supervisor just as you had before?

9 A Yes.

10 MR. IVEY: That does it for me.

11 MR. BARTOLOMUCCI: I am going to have some
12 more. Would you like to take a short break before we
13 launch into it? Fine, let's take five minutes.

14 (Recess.)

15 MR. BARTOLOMUCCI: Back on the record.

16 EXAMINATION

17 BY MR. BARTOLOMUCCI:

18 Q Mr. Knight, I am going to come back to your
19 investigation of Madison. You investigated a number
20 of institutions; isn't that right?

21 A Correct.

22 Q How many would you say you've looked into,

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1 investigated?

2 A Well, I had 23 institutions, so I would
3 have reviewed 23.

4 Q Compared to some of the other institutions,
5 how would you characterize the degree of criminal
6 activity at Madison?

7 A Well, based on the number of referrals, I
8 would have to say sizewise there was more at Madison.

9 Q There was more wrongdoing at Madison?

10 A Based on the size, and the number of
11 referrals.

12 Q Before you were talking about your
13 investigation of lot number 13 and Hillary Clinton.
14 Can you tell us a little bit more about how you got
15 started on that; what you were told to look for; what
16 you found?

17 A I don't recall. That was my first
18 assignment in the Madison deal, and I don't recall
19 what the allegations or what we thought might be the
20 allegations at that time. I don't recall. I just
21 remember it had to do with Hillary. It seems to me
22 she bought or owned a property and sold it, but I

1 really don't have any details because I did not see a
2 crime.

3 Q You did some investigation, but didn't find
4 anything?

5 A Yes, I did.

6 Q I take it Lewis didn't try to keep this
7 part of the investigation for herself; it involved
8 Hillary Clinton and I would guess it may be kind of
9 interesting, but you did that?

10 A I did that one.

11 Q And Ms. Lewis never tried to keep it for
12 herself?

13 A That was my first assignment, so I guess
14 not.

15 Q You also said when you started the
16 investigation you had a list of targets, you were
17 given certain targets?

18 A Yes.

19 Q Can you tell us who those targets were?

20 A Well, the first target -- I am using the
21 word target as, this is, we want you to look at this
22 for possible criminal referral, and the first one was

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1 the one Hillary Clinton -- Hillary Clinton had.

2 Q Targets were certain people?

3 A People or transactions.

4 Q People or transactions.

5 Other than Hillary and the targets and
6 transactions discussed in the two referrals that you
7 prepared, do you remember what other targets you
8 looked into?

9 A That was all that I had.

10 Q Just the Hillary transaction and then the
11 two referrals?

12 A Yes.

13 Q Do you know what other targets were being
14 investigated by the Madison team?

15 A I knew at the time. But I don't recall. I
16 never -- I never paid much attention, but at the
17 time, yes, I was aware of it.

18 Q But you don't remember now?

19 A I just remember some of them that resulted
20 in referrals.

21 Q I recall you telling Mr. Ivey that, from
22 about May of '93 until the submission of the

1 referrals in that year, you were spending 100 percent
2 of your investigatory time on Madison?

3 A Yes.

4 Q But as I understood what you were saying,
5 that doesn't mean you spent 100 percent of all your
6 time on Madison; you were doing -- you had other sort
7 of noninvestigatory responsibilities, or --

8 A Yes, I would have reports that were due on
9 a quarterly basis and I would also have to handle any
10 litigation support for my 23 institutions, whether
11 that be the FBI or U.S. Attorney for that area. If
12 they had a request I would have to work on it.

13 Q You were working on other institutions at
14 the time, you just weren't going into the field,
15 gathering facts?

16 A That's correct.

17 Q Do you have a sense of what percent of your
18 total time was on Madison versus non-Madison
19 projects?

20 A During that period?

21 Q During that period.

22 A I would guess 80 percent of total time.

1 Q For un-Madison?

2 A Yes.

3 Q Given the referrals that you've prepared
4 and the nine referrals which the team prepared during
5 that year, did you feel somehow that the time you
6 spent and the team spent on Madison was being wasted
7 or was ill spent?

8 A I never really thought about it.

9 Q So you never formed the opinion that
10 resources were being misallocated, that time was
11 being wasted?

12 A No.

13 Q Turning to the matter of the PLS legal
14 review, you said you had seen the -- you had seen the
15 review?

16 A I looked at the part that applied to my
17 two.

18 Q And you said it essentially raised some --
19 you characterized them as what-if's?

20 A Yes, what if they did this, what if this
21 meant that. Could it be the -- it was just from
22 another point of view, other than what I had directed

1 in my referral.

2 Q Did you read any of these and say, gee, why
3 didn't I look into that?

4 A I remember thinking, well, that's
5 possible. That could happen. I don't think so, but
6 it could have.

7 Q So did you think these questions were
8 particularly useful? If they had been posed to you
9 at an earlier time, would you have started to look
10 into some of the things that were raised?

11 A Possibly. I don't recall any for
12 instances. I would have thought about it. I think I
13 still would have drew the same conclusions that I
14 did.

15 Q So, even after -- let's say you had the
16 legal review first, I mean you had those questions,
17 you would have written the same referrals,
18 essentially?

19 A I think I would, but I can't recall any
20 specific points that they brought out.

21 Q I have a copy of the review, which for the
22 record is document PLS 0001S, and I think I've marked

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1 the two sections which pertain to your referrals.
2 Maybe you can just look over those quickly and
3 refresh your memory.

4 A Yes, I remember this.

5 Q Having looked at that, I will ask you
6 again, are these sorts of questions ones which would
7 have modified your investigation or caused you to
8 write a different type of referral?

9 A If I would have had this initially I
10 probably would have answered the questions that they
11 bring out that I felt was reasonable.

12 Q But do you think that by and large these
13 questions are good ones that would have affected the
14 way you conducted the investigation, had you thought
15 of some of these?

16 A I would have addressed some of the issues
17 to make it more clear. These would not have changed
18 my outcome.

19 Q So, by and large or overall, these
20 questions really don't undermine your referral or
21 question its validity in any way, just sort of
22 additional thoughts for consideration?

1 A Yes. That's the way I read the ones I
2 did.

3 Q Okay. I believe you said earlier that you
4 personally didn't think the PLS review was meant to
5 be obstructive. Did others in the Kansas City office
6 feel differently?

7 A I can't really answer what they thought.
8 They weren't happy with it. I don't know what they
9 thought the reasons were.

10 Q There were people that were unhappy --

11 A Yes.

12 Q -- that the review was done?

13 A That the -- it was delayed, and yes.

14 Q That it delayed the submission of the
15 referrals?

16 A Yes.

17 Q And do you remember why they were unhappy
18 about it?

19 A I don't recall them making any statements
20 as far as reasons, no.

21 Q Do you recall anyone saying that they
22 thought this was some sort of a stalling tactic or

1 anything like that?

2 A That is just a safe assumption.

3 Q You think that it is safe to assume that
4 was the source of the discontent, you mean?

5 A Yes.

6 Q Did you hear any other sorts of criticisms
7 of the review?

8 A No, other than it's -- it just took time.

9 Q Turning to the issue of the alleged leaks
10 of information to the press. I gather from what you
11 said that your office was a pretty small one, that
12 all of the investigators sort of had access to the
13 same material; is that fair to say?

14 A Yes.

15 Q And to clarify, did you say earlier that if
16 there were leaks, they could have come from anyone in
17 that unit?

18 A That's correct, anybody in the
19 investigations department.

20 Q And based upon your having worked with Jean
21 Lewis, do you have any reason to believe that she was
22 the person who did -- who, if anyone, leaked

1 information?

2 A I have no proof on that. I can't say.

3 Q Do you have even a reason to suspect?

4 A Well, the one reason to suspect would be
5 she knew this investigation more than anybody else.
6 So, yes. But I'm not saying she did.

7 Q Right. And do you have any reason to
8 believe that she is the kind of person who would do
9 that sort of thing?

10 A No, I look at her as very professional,
11 and --

12 Q When you were asked who in the office was
13 particularly political or expressed dislike for the
14 Clintons, you named Ed Noyes. But you didn't name
15 Jean Lewis. Is that because she didn't say the sorts
16 of things that Ed Noyes said?

17 A She wasn't near as outspoken politically as
18 Ed Noyes was; there was never anything personal. It
19 was strictly politics. It would have been -- I could
20 name the same amount of people that would be very
21 vocal Democratically toward the Republican.

22 Q So the comments coming from Jean Lewis

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1 would be sort of ordinary political talk just like
2 you might talk about sports or anything else, just
3 within the --

4 A Yes.

5 Q The normal bound of what people talk about
6 in offices?

7 A Yes, I would say so.

8 Q You also said that you wouldn't have had
9 the guts to turn over documents to Leach or a
10 Congressman, but I didn't take you as being -- as
11 personally passing judgment on Ms. Lewis for doing
12 that; is that right?

13 A I said that I would not have the guts to do
14 that.

15 Q You might not do it yourself?

16 A I would not do it myself.

17 Q Can you imagine circumstances in which you
18 might give a document of some sort to a member of
19 Congress?

20 A Only if -- the only time, if something
21 affected me or my family personally, would I pursue
22 it at that stage.

1 Q But this is your personal view?

2 A A hundred percent my personal view.

3 Q And you are not here casting judgment upon
4 Lewis's decision to do that?

5 A Absolutely not.

6 Q Do you know what the documents were that
7 she gave to Leach?

8 A No, I do not.

9 Q Do you really know why she did it?

10 A She has never told me why, no.

11 Q Do you know if these documents were
12 confidential?

13 A I don't know what the documents were. So I
14 could not answer that.

15 Q In terms of how Jean Lewis got along with
16 other people in the Kansas City office -- Kansas City
17 office, you said there were some people who liked
18 her, some people who didn't. Would you say that this
19 was sort of par for the course in an office setting?
20 Is there anything particularly unusual?

21 A Well, I would have to say there's more
22 people that didn't like her than that's in the

1 average office place, because she is outspoken,
2 she's -- she does her job the way she sees fit and if
3 that steps on people's toes, then it just does.

4 Q This is as compared to the average person
5 within an office, but I take it that you've worked in
6 other offices, encountered similar situations, where,
7 you know, just some -- people don't get along and --

8 A Yes, that's correct.

9 Q I mean do you find anything particularly
10 out of the ordinary about Lewis's relationship to
11 some other people and the conflicts there?

12 A Like I just said, I think the number of
13 people that didn't like her was greater in our office
14 than in an average office. Or didn't like what she
15 did. I should clarify.

16 Q You said that when you prepare a criminal
17 referral you like to stick very much to the
18 documents, and that you found -- and short and
19 sweet. But I take it there is no one way to prepare
20 a criminal referral?

21 A No, everybody will have their different
22 style.

1 Q So if some people had more editorial
2 comments than others, then you wouldn't consider that
3 improper?

4 A I would not consider it improper. I
5 just -- it just does not fit the way I do things, and
6 if it is personal editorial, I don't think it should
7 be in there.

8 Q You also said that you thought the change
9 in the policy with respect to the legal review by PLS
10 was due to the sensitivities about the Madison
11 referral, even if it wasn't an attempt to obstruct
12 it, but did I hear you right when you said it grew
13 out of the sensitive nature of the Madison referrals
14 themselves?

15 A I said in my opinion I think the reason
16 they reviewed them that way was due to the
17 overcautiousness or concern due to the sensitive
18 matter, yes.

19 Q Because of Madison itself?

20 A Yes.

21 Q So for whatever reason, the change in
22 policy was related and directly related to the

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1 Madison referrals?

2 A Well, I don't know what it was directly
3 related to. I said that's my opinion as why. I
4 don't know what it was directly related to. They
5 didn't --

6 Q How did you come to form this opinion?

7 A Common sense.

8 Q Just that the timing of it, for example?

9 A The common sense of wanting to be real
10 sure, wanting to cover all bases, when you are
11 talking about a governor or whatever, that just
12 stands to reason.

13 Q Had there ever been, to your knowledge, a
14 legal review, prior to submission, of referrals out
15 of the Kansas City office before this one?

16 A To my knowledge, prior to the Madison ones,
17 we would mail off our referrals to the U.S.
18 Attorney's office, FBI and PLS the same day, they
19 would all go.

20 Q The same day, so therefore the review would
21 not occur before submission?

22 A Yes, that's correct.

1 Q Are you aware of any other legal reviews
2 occurring after these Madison referrals? Did the
3 policy continue to be applied in the same way?

4 A I can't answer that. I don't know.

5 Q I think you told us that you wrote another
6 referral on a different case after these Madison
7 ones; is that right?

8 A Yes, I did.

9 Q Do you remember there being a legal review
10 of -- at all?

11 A I cannot recall. I don't know.

12 MR. BARTOLOMUCCI: Mr. Knight, I think
13 that's all I have.

14 MR. IVEY: I have a few more. I apologize
15 for ping-pong here.

16 BY MR. IVEY:

17 Q You said that based on the number of
18 referrals with respect to Madison, there might have
19 been more wrongdoing at Madison than at other
20 institutions?

21 A Based on the size of the institution and
22 the number of referrals that resulted, it appears

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1 that there was more on a size basis. If I understood
2 his question.

3 Q Let me see if I follow you. Are you saying
4 because -- in comparison with institutions that are
5 small like Madison, or are you saying because Madison
6 is a small institution?

7 A No, I am saying on a dollar per dollar
8 basis, the size of the institution, versus all other
9 institutions, the number of referrals are greater in
10 Madison than they are on the others.

11 Q Okay. So for an institution that lost I
12 think it was \$67 million, which is what Madison lost,
13 there were a lot of referrals for an institution that
14 size; that's what you are saying?

15 A Yes.

16 Q But for institutions that were -- we
17 already discussed that there were countless
18 institutions that were much larger than that, and
19 lost much more than \$67 million; is that a fair
20 statement?

21 A Yes.

22 Q Is it fair to say that you're not sure how

1 many referrals came out of a lot of the larger
2 institutions that failed?

3 A I don't know now. I did have that
4 information when I worked in that area.

5 Q Are you aware of people within some of
6 these large financial institutions that failed being
7 prosecuted by the Justice Department, and four, five,
8 six instances of criminal litigation in different
9 states?

10 A I am not sure I understand your question.

11 Q Are you aware of situations where
12 individuals were prosecuted by the Justice Department
13 in different types of litigation?

14 A Yes.

15 Q Different states?

16 A Yes.

17 Q Are you aware of large financial
18 institutions that have massive fraud going on?

19 A Yes.

20 Q Are you aware of financial institutions
21 that as a result of this massive fraud lost more
22 money than Madison did?

1 A Yes.

2 Q Let me show you this list here. I am
3 afraid there is no Bates stamp number, but there is
4 an ID number, I guess, for the file, and at the
5 bottom it is S/AT 0043 and S/AT 0044. And to put it
6 in English, it is a memorandum from Randall Walton,
7 criminal coordinator for investigations, to Richard
8 Iorio and Michael R. Van Vaulkenberg, dated May 22,
9 1992. And it says "priority listing of
10 institutions."

11 Let's flip to the second page and it says
12 in this paragraph "the criminal investigations on the
13 following institutions has been partially completed
14 and some criminal referrals have been filed. The
15 criminal referrals that have been filed are being
16 investigated by other prosecutive and investigative
17 agencies, and these institutions are considered
18 active and are on the attached schedule for
19 completion of the criminal investigation."

20 Now there is a list of 10 under that
21 paragraph, one of which is Madison Guaranty. You
22 recognize any of these other nine institutions?

1 A Yes.

2 Q Which ones do you recognize?

3 A Well, I -- I have heard of all of them.

4 Q Are you familiar with the amounts of money
5 that any of them lost?

6 A No, I am not.

7 Q Take Savers Federal, for example?

8 A No, I am not. None of those were in my
9 states, these are all Oklahoma and Arkansas
10 institutions.

11 Q So is it fair to say you are not sure about
12 the amount of losses with respect to those other nine
13 institutions listed with Madison?

14 A Yes, I am not familiar.

15 Q Okay. Let me ask you about the amount of
16 time you were spending on investigations other than
17 Madison.

18 Now, as I hear you describe it, it sounds
19 like you were doing your active investigative work on
20 Madison, and you were doing sort of maintenance work
21 on the other ones. If there was information
22 requested you would get it, if a brush fire came up

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1 you would deal with it, but your active investigation
2 time was spent on Madison?

3 A That's correct.

4 Q So you -- were you doing any active
5 investigative work on anything other than Madison
6 during that period?

7 A No, I wasn't.

8 Q Now, with respect to the amount of time you
9 spent on Madison, I guess you were asked if that
10 amount of time was excessive or ill spent. But is it
11 fair to say that any investigative agency, like RTC,
12 has a limited amount of resources?

13 A We would have a limited amount of
14 resources.

15 Q There is only a certain number of
16 investigators to work on a limited amount of cases?

17 A That's correct.

18 Q And in trying to determine which
19 investigations you should work on, is it also fair to
20 say or would you think that the people who decide
21 what investigations will be conducted look at things
22 like the size of the loss of an institution, the

1 amount of fraud committed in an institution,
2 possibility for civil recovery from an institution,
3 those types of factors?

4 A All those things should be factors.

5 Q Okay. So, in other words, in order to
6 determine whether the time was best spent on Madison,
7 as opposed to some other institution, you have to
8 know what was going on in these other institutions on
9 the sheet that we just talked about a moment ago?

10 A Yes.

11 Q Now, with respect to the PLS legal review,
12 are you aware of any circumstances on other referrals
13 that were discussed in the PLS legal review with
14 respect to the Madison referrals or other referrals,
15 where the lawyers were not sure that all the
16 essential elements of a crime had been established,
17 or even addressed in a referral?

18 A No. I'm only familiar with the ones that I
19 did. That's the only ones I reviewed.

20 Q Would you say it is a reasonable concern
21 that should be raised by someone reviewing a referral
22 that's -- before it goes out?

1 A If someone reviewing it has some questions,
2 then it is a legitimate concern.

3 Q So, for example, if a referral alleges
4 possible fraud, but there's no evidence of intent
5 that is presented whatsoever within the referral,
6 would you think that that's a concern that the legal
7 review people should point out?

8 A Yes.

9 Q Would you have a concern about, yourself,
10 sending out a referral that alleges fraud, for
11 example, but doesn't address intent in any way
12 whatsoever?

13 A No -- I would have a personal problem with
14 that.

15 Q Why is that?

16 A Well, if I am not convinced of it myself I
17 don't know how I expect anybody else to be, so I
18 would have to prove it to myself or at least have a
19 reasonable doubt or a reasonable concern that this
20 did happen. I would have to have something other
21 than I don't -- it just doesn't look right.

22 Q Now, with respect to the delay that was

1 caused by the PLS review, shipping the referrals out,
2 you testified a moment ago that you thought some
3 people might have thought it was a stalling tactic;
4 is that --

5 A That's my opinion, yes.

6 Q Did you think that it was a stalling
7 tactic? Did you have any evidence that this was an
8 attempt to stall?

9 A No.

10 Q Now you were also asked about leaks.

11 A I'm sorry. About what?

12 Q Leaks. I believe counsel asked you if
13 Ms. Lewis was the kind of person who would do that
14 kind of thing. Do you recall that question?

15 A Yes. I recall the question.

16 Q You said -- putting her character aside,
17 this is not an attempt to impeach her character with
18 this question. Would it be fair to say that if
19 Ms. Lewis provided documents to Congressman Leach
20 that were confidential, then that would be a leak; is
21 that a fair statement?

22 A I would -- it would be considered the same,

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1 in my opinion.

2 Q So whether she is a good person or not, she
3 would have provided confidential information without
4 permission?

5 A I don't know what the documents were that
6 was provided. That's assuming they're confidential
7 documents.

8 Q Let's assume they were.

9 A Assuming they were confidential that would
10 be a leak, yes.

11 Q You also mentioned that there were people
12 that didn't like her, or what she did, I think was
13 your language.

14 And I just wanted to clarify for the
15 record, by that, did you mean going to Congressman
16 Leach?

17 A That's exactly what I meant.

18 Q Did you mean anything else by that at all?

19 A No, I'm -- I really don't know whether they
20 don't like her. I think it is mostly what she has
21 done they don't like.

22 Q I just wanted to make sure the record was

1 clear as to the source of that dislike.

2 Last question for now. When you submitted
3 the referral to PLS, did you have a chance to see it
4 after PLS had reviewed it?

5 A I don't recall when we called -- when all
6 investigators got together to sign these referrals.
7 I don't recall if that was before or after the
8 review.

9 Q Did there come a time, though, when you saw
10 it, your referral again?

11 Let me put it this way: Do you know if PLS
12 changed anything in your referral, any language in
13 your referral, any charges, any number, anything at
14 all?

15 A Nothing was changed.

16 Q So, regardless of what they did, your
17 referral as you wrote it went out as you wrote it; is
18 that fair to say?

19 A Yes.

20 MR. IVEY: That's all for me.

21 MR. BARTOLOMUCCI: I have three categories
22 of questions which I don't think will take very

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1 long.

2 EXAMINATION

3 BY MR. BARTOLOMUCCI:

4 Q With respect to that May 22, 1992 priority
5 listing, the memo that you just looked at, I don't
6 know if you need to see it again, but wasn't Madison
7 on that list?

8 A It was on the list, yes.

9 Q Does that list, as you recall, rank in
10 order, this is the one we have to do first and this
11 one last, or they are just sort of lumped together,
12 aren't they?

13 A This is the first time I have ever seen
14 this, but it appears like these here, "the following
15 institutions have been previously investigated for
16 criminal activity and unless something unforeseen
17 surfaces they are closed."

18 I can just read this to you, but yes, they
19 are ranking them.

20 Q Madison is listed along with several other
21 thrifts in that memo; right?

22 A Yes, in the partially completed section.

1 Q And it's listed in the same area as the
2 thrifts to which counsel was drawing your attention?

3 A Yes.

4 Q Around in that particular grouping, there
5 is no effort made to say this one is worse than that
6 one?

7 A No.

8 Q So all those are treated as in the same
9 category of priority?

10 A Yes.

11 Q And if this memo is in May of 1992, and I
12 believe it was dated May 27, 1992, that's before you
13 did, and the Madison team did the bulk of your
14 investigatory work in '93; isn't that right?

15 A That's correct.

16 Q So this memo could not have been composed
17 with knowledge of what your investigation would turn
18 up?

19 A No, it couldn't have.

20 Q Moving now to the legal review of the
21 criminal referrals, I'm correct, aren't I, that a
22 legal -- a criminal referral is not intended to lay

1 out every piece of evidence which you would need to
2 submit to a jury to gain a criminal conviction?

3 A No, they are not trial ready.

4 Q In fact they are not even intended to be as
5 detailed as an indictment, which would have to list
6 every single element of the crime and all the
7 particular facts?

8 A That's correct.

9 Q In fact, the purpose of a criminal referral
10 is to let law enforcement officials know the
11 reasonable suspicion of criminal activity is afoot?

12 A Yes.

13 Q With respect to, say, questions of intent,
14 it might well be possible to raise a reasonable
15 suspicion of criminal activity in a referral without
16 discussing intent?

17 A Yes, it could be there, but intent is -- is
18 an important part.

19 Q Sure. As you described your work to me,
20 you don't or you didn't go and interview people when
21 you were working on your referrals; isn't that right?

22 A That's correct.

1 Q So you weren't going to be eliciting
2 statements from people about, you know, what this
3 person thought or what that person thought?

4 A No.

5 Q So, intent, if any, you would glean from
6 the documents themselves; is that right?

7 A I would, yes.

8 Q And that in many cases you can conclude,
9 well, someone must have known from these documents
10 something. You can for certain things conclude,
11 well, they must have known this, given what these
12 documents show?

13 A We have to assume certain things.

14 Q The last thing I want to ask you about, do
15 you think that -- I am asking hypothetically here.
16 Is there a difference in your mind between giving
17 confidential information to a newspaper person and
18 not telling anyone that you are doing that, you know,
19 that classic leak of information to the press, on the
20 one hand, and turning over documents to a national
21 representative, Senator, member of Congress, in an
22 attempt to focus public attention on a particular --

1 what you perceive to be a problem?

2 A That's the same thing in my opinion.

3 Q You don't see any difference between --

4 A Not in this instance.

5 Q Do you think there is --

6 A Because the outcome is the same.

7 Q I am not talking about any particular
8 instance. I mean I am just asking in your mind can
9 you see a difference between, say, whistle-blowing
10 and leaking?

11 A This isn't whistle-blowing in my opinion.

12 Q I am not asking about this particular
13 case.

14 A I see a difference between whistle-blowing
15 and this, yes, I do.

16 Q I am not asking with reference to this
17 particular case or any particular case, but you would
18 agree that there is a difference between
19 whistle-blowing, that is letting a higher authority
20 know of suspected wrongdoing, what I am calling
21 whistle-blowing, and the classic leak of information
22 to the press?

1 A I see a difference.

2 MR. BARTOLOMUCCI: That's my last question
3 to you.

4 MR. IVEY: Could you repeat the last
5 question and the answer.

6 (The reporter read the record as requested.)

7 EXAMINATION

8 BY MR. IVEY:

9 Q Could you clarify that a little for me.
10 Maybe it would be clearer if you would talk about
11 this particular case. Did you think that Ms. Lewis
12 going to Congressman Leach was a whistle-blowing
13 situation?

14 A No, I do not.

15 Q So the hypothetical he just asked you has
16 nothing to do with the Lewis scenario?

17 A No, because he said not to apply it to this
18 case.

19 EXAMINATION

20 BY MR. BARTOLOMUCCI:

21 Q But you told me that you didn't know what
22 she gave to Congressman Leach, whether the documents

1 were confidential, or why she did it; is that right?

2 A I told you that, but I also know the
3 outcome of the referrals, and they do not, in my
4 estimation, equal whistle-blowing. None of these
5 people are our supervisors or government employees,
6 that -- on the referrals, so that would not be
7 whistle-blowing; that would be criminal.

8 Q In your opinion, based upon what you know,
9 you wouldn't consider that whistle-blowing?

10 A No, I would not.

11 Q But again that's based upon the limited
12 knowledge that you have of it?

13 A Yes.

14 MR. BARTOLOMUCCI: No further questions.

15 (Whereupon, at 7:25 p.m., the deposition
16 was concluded.)

17

18

19

RANDY KNIGHT

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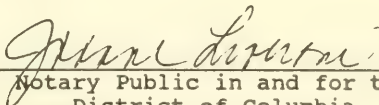
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

JULY 31, 2000

**DEPOSITION OF GERALD McDOWELL
IN RE: S. RES. 120**

THURSDAY, OCTOBER 19, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of GERALD McDOWELL, called for examination pursuant to notice of deposition, at 10:21 a.m. in Room 632 of the Dirksen Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, Esq.
Majority Deputy Special Counsel
STEVEN H. FROMEWICK, Esq.
Minority Assistant Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

CHARLES J. SGRO, Esq.
Special Assistant to the Deputy Attorney General
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Washington, DC 20530
On behalf of the Deponent.

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EXHIBITS

Gerald McDowell DEPOSITION NUMBER	IDENTIFIED
McDowell Exhibits 1 and 2	3, 2729
McDowell Exhibit 3	34, 2839

P R O C E E D I N G S

(McDowell Exhibits 1 and 2 identified.)

Whereupon,

GERALD MC DOWELL

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q State your name for the record.

A Gerald McDowell.

Q Your present business address?

A Room 10100, Bond Building, 1400 New York Avenue, Washington, D.C.

Q And what is your business phone number?

A 202-616-0430.

Q And what is your present position with the Department of Justice?

A I am the chief of the asset forfeiture and money laundering section.

Q And how long have you been in that

position?

A Since Monday, and prior to that, if I can anticipate your question.

Q Go ahead.

A I was the director of the asset forfeiture office, since October 3rd, 1994.

Q Where were you prior to being the director of the asset forfeiture office?

A For two and a half years, I was the chief of the fraud section of the Department of Justice.

Q What dates would that have been from?

A March 1992 until October 3, 1994.

Q Now, in your -- strike that.

Mr. McDowell, this deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Senate Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services Inc., the Arkansas Development Finance Authority, and other related matters.

1 Section (1)(b)(2)(c) of Senate Resolution
2 120 authorizes investigation and public hearings into
3 whether the Department of Justice has improperly
4 handled RTC criminal referrals relating to Madison
5 Guaranty Savings & Loan Association or Whitewater
6 Development Corporation. This will be the focus of
7 today's deposition.

8 You were requested to testify on October
9 5th, 1995. This deposition is being taken in advance
10 of public hearings that may be held later, in October
11 or November of this year. It is possible you may
12 testify at these hearings.

13 We will ask you a series of questions. You
14 are testifying under oath. If you don't understand a
15 question, let us know and we will rephrase it.

16 The stenographer will prepare a record of
17 questions and answers. The deposition will be
18 treated as committee confidential until the
19 commencement of the hearings. Prior to the hearings
20 you will receive a letter from the committee telling
21 you that you may come to the Senate to review the
22 transcript of your deposition. And you may make

1 notes of any corrections of transcription on an
2 errata sheet.

3 If you are called to testify in a public
4 hearing, you will be permitted to have a copy of your
5 deposition transcript four days in advance of your
6 testimony. You may be represented by counsel.
7 Objections to the form of questions will be noted for
8 the record. Counsel may object on grounds of
9 privilege or relevance. The committee chairman may
10 rule on objections where the witness refuses to
11 answer a question.

12 Do you understand that?

13 A Yes.

14 Q Mr. McDowell, when you were chief of the
15 fraud section between March of 1992 and October 3rd,
16 1994, you were supervising Allen Carver at that time;
17 correct?

18 A That's right.

19 Q He was your principal deputy?

20 A That's correct.

21 Q And Mr. Arterberry, you supervised him as
22 well?

1 A That's right. He was one of the deputy
2 chiefs of the fraud section.

3 Q So he was a deputy to Mr. Carver?

4 A No, he was a deputy to me, and of all of my
5 deputies, Allen was the principal deputy.

6 Q Now, are you aware of the committee's
7 document request to the Department of Justice dated
8 August 25, 1995?

9 A I know that there have been numerous
10 document requests from the House and the Senate. And
11 I assume there was one but I don't think I've -- if I
12 have focused on it, I can't think of it now.

13 Q Pursuant to these various requests, have
14 you searched for responsive documents, notes, reports
15 and memorandum?

16 A Yes, right.

17 Q Have all the responsive documents that you
18 are aware of been produced?

19 A That's correct.

20 Q Did you speak to anyone, other than counsel
21 from the Justice Department, prior to your deposition
22 today, with respect to the substance of your

1 testimony?

2 A The substance of my testimony, no, but the
3 committee's inquiry, yes.

4 Q What do you mean by that?

5 A I didn't tell people what I was going to
6 talk about, but I talked to people who had been
7 witnesses before the committee, just to find out what
8 the committee was doing.

9 Q What the questions were that were asked?

10 A Not so much -- not what the questions --
11 who was the questioner, how long did it take, what
12 did they go into, what was it like.

13 Q Who did you have these discussions with?

14 A Carver, Don Mackay, and Joe Gangloff.

15 Q When did you have these discussions with
16 Carver and Mackay?

17 A Yesterday.

18 Q When did you have the conversations with
19 Gangloff?

20 A Yesterday morning.

21 Q Gangloff is in a different section than
22 your own; correct?

- 1 A That's right.
2 Q Public integrity?
3 A Deputy chief of the public integrity.
4 Q Did you meet to discuss this?
5 A We met. There was a fire drill in the Bond
6 Building yesterday and we all had to gather on the
7 street, and it was -- one, we all know one another,
8 and two, we are all undergoing a common experience.
9 So Carver and I left the building together, and ran
10 into Gangloff and we discussed it.
11 Q Okay. Did Carver talk to you about the
12 questions that he was asked?
13 A I think he generally went through the
14 questions. We didn't spend a lot of detail on what
15 questions. What I wanted to know was what it was
16 like, how long it took, that kind of thing.
17 Q What about Mr. Gangloff?
18 A Gangloff volunteered a few things; I don't
19 know --
20 Q Like what?
21 A He was kidding. He said something to the
22 effect that, he was asked if he would review his

10

- 1 House transcript and he indicated he didn't plan on
2 doing it unless someone told him to.
3 And that kinds of thing. I am not too sure
4 whether he was kidding or not, but --
5 Q Anything else Mr. Gangloff said to you?
6 A Well, it was more than -- we talked more
7 than that, but that's the one thing that stuck out in
8 my mind, because he is generally not a frivolous guy
9 so I couldn't tell whether he was pulling my leg, or
10 whether he actually said that, but that's what he
11 told me.
12 Q He said he had not reviewed the House
13 transcript?
14 A No, that he didn't plan to correct it.
15 Q What about with respect to Mr. Mackay, did
16 you have discussions with him?
17 A Right. Carver and I were coming back from
18 a reception over at Treasury's executive office of
19 asset forfeiture, and Mackay was out on the street --
20 he is a smoker and he tends to have to leave the
21 building every once in a while. And we met him and
22 Jim Nixon coming back.

1 Q Did you discuss the questions or his
2 answers yesterday with him?

3 A I can't say that we didn't discuss it but
4 it was more like how long did it take. Carver seemed
5 to be here for an awfully long time, and I wanted to
6 know, was it the same with Mackay, just to plan out
7 my day and generally commiserated about the
8 experience.

9 But I don't recall any specific questions.
10 You know, Don said that somebody had told him -- and
11 maybe it was the -- the warning that you just gave
12 me, but he said that there was an indication that he
13 would have to go back for open hearings, which I
14 mean, frankly, we -- that was a little surprising.

15 Q Any other discussions you recall with
16 either Carver, Mackay or Gangloff about the substance
17 of the depositions?

18 A Well, with Carver I had met and talked to
19 him about it yesterday. I mean when the fire drill
20 came, we were meeting.

21 Q So you did -- had some extensive
22 discussions about the substance of his deposition?

12

1 A Yes. It was definitely about the
2 deposition. The substance is --

3 Q What was it?

4 A I wanted to know, in as much detail as
5 possible, how long it took, what were the questions
6 like, what was the proceeding like. We had both gone
7 through the House one and I think we had the same
8 questioner.

9 Q Okay, but did he --

10 MR. BEN-VENISTE: Can I interpose a
11 question about the relevance of all of this. Are you
12 suggesting that it is somehow improper for people to
13 discuss their testimony before this committee?
14 Nobody is under any injunction not to discuss it.

15 MR. GICALE: I think it is relevant in
16 terms of the way people give testimony and if people
17 are consulting with each other before they come in to
18 testify, that may have an impact of the testimony as
19 each of them as they come forward. So I think it is
20 relevant to get into what they know about the other
21 person who has come before this committee.

22 MR. BEN-VENISTE: This takes on the aspect

1 of the Versailles hall of mirrors. You start with
2 something that is difficult to understand the
3 relevance of, and then you go into why people discuss
4 their testimony about that thing about which there is
5 little relevance to start with. So if we just going
6 to spend our time doing this, you know, we are 15
7 minutes into this deposition and we haven't gotten to
8 any of the substance of what this witness can
9 provide.

10 MR. GICALE: I note your objection, I note
11 your concern and I intend to move along. But I do
12 believe it is relevant when witnesses consult with
13 each other before they come in here to testify and I
14 think it impacts on what their testimony ultimately
15 may be. And I think that that's a concern that's
16 relevant, whether it is this proceeding or any other
17 proceeding.

18 BY MR. GICALE:

19 Q What matters of substance did you talk
20 about with Mr. Carver with respect to his deposition?

21 A I think the only sustained matter of
22 substance that we talked about was that he had

1 prepared a chronology that he thought was useful in
2 his testimony, and I said can I have a copy and he
3 gave me a copy of it.

4 Q So you had the benefit of that this morning
5 before you came in, his chronology?

6 A I had the benefit of it last night. I
7 didn't read it this morning.

8 Q Anything else of substance that you
9 discussed with Mr. Carver?

10 A Not that I can remember. I mean we went
11 through basically those subjects of what it was like
12 and why did it take so long, and this and that. Then
13 the fire drill came and we went downstairs, and ran
14 into Gangloff, and the topic was on our minds, and
15 then later in the day, talking to Mackay, and Nixon
16 on the street, similarly, it was a common topic. But
17 I don't think we went deeply into any particular
18 matter.

19 Q Now, with respect to the chronology, did
20 you go through it item by item with Mr. Carver
21 yesterday?

22 A No. After he gave it to me, when I had a

1 chance last night to go over my testimony in full and
2 to look at the chronology, I read it.

3 Q Did you have a conversation with anyone
4 else who has testified before this committee about
5 the substance of their testimony?

6 A About the substance, no. I don't know all
7 who has testified, but those are the people that I
8 have talked to.

9 Q I am going to show you what's marked for
10 identification as -- it is an exhibit, Exhibit Number
11 1. This is a copy of your deposition before the
12 Committee on Banking and Financial Services, U.S.
13 House of Representatives, in the matter of Madison
14 Guaranty Savings & Loan, and the date is September
15 15, 1995.

16 Have you had -- you testified before that
17 committee on that date; is that correct?

18 A Yes.

19 Q Under oath?

20 A Right.

21 Q And have you had an opportunity to review
22 your testimony --

1 A Yes.

2 Q -- before that committee on that date?

3 A Yes, I looked at it yesterday.

4 Q And, after -- is your testimony that day,
5 after reviewing it, a true and accurate reflection of
6 your testimony of that day?

7 A I know there are a number of relatively
8 minor corrections, that I'll -- when I get a chance,
9 I will make. I made notes on my copy.

10 Q Other than those minor --

11 A One was of substance. They left a "not"
12 out which changed the meaning but the context was
13 pretty clear what I meant, but --

14 Q The "not," if that's significant, what page
15 are you referring to?

16 A If I had known, I would have brought my
17 copy. But it's --

18 MR. GICALE: Off the record.

19 (Discussion off the record.)

20 MR. GICALE: Back on the record.

21 BY MR. GICALE:

22 Q Mr. McDowell, apparently you have indicated

1 that you will be submitting an errata sheet with
2 respect to this deposition?

3 A That's my plan, yes.

4 Q I would request then when you do submit
5 that, that we receive a copy of that errata sheet so
6 that we can mark it as Exhibit Number 2, pursuant to
7 this deposition.

8 MR. SGRO: You will receive a copy when it
9 is completed.

10 MR. GICALE: Do you have any idea how long
11 before that is submitted?

12 MR. SGRO: It has to be submitted to the
13 House 30 days from our receipt; 10 days have probably
14 passed already, so within the next two weeks, you
15 should receive it.

16 BY MR. GICALE:

17 Q Mr. McDowell, you were asked a number of
18 questions in that House deposition with respect to
19 the MacDougall memorandum, the Mark MacDougall
20 memorandum --

21 A Right.

22 Q -- the recusal of Paula Casey and a number

1 of other matters. I would just like to focus on a
2 few of those matters or a few documents related to
3 those matters.

4 First I will show you what's marked for
5 identification -- now, the second page of this is
6 marked Bates number 004451, and the only number I
7 have on the front page is GEM 34. And it is a
8 redacted document from Department of Justice, and I
9 don't have a date.

10 Richard, if you want to take a quick
11 glance.

12 MR. BEN-VENISTE: Off the record.
13 (Discussion off the record.)

14 BY MR. GICALE:

15 Q Mr. McDowell, directing your attention to
16 that exhibit, in particular the second page and this
17 is 004451, are those your notes?

18 A The first page looks like my handwriting.
19 The second page, I don't think so.

20 Q Do you know what these notes are
21 relating -- are related to?

22 A Well, the first page, they were kind of

1 self-explanatory Paula Casey should recuse on Clinton
2 allegations.

3 The second page, to the extent I can read
4 it, "preelection referral re:," then I can't make it
5 out.

6 Q Would those words be check kiting?

7 A Well, I can see kiting, after the slash but
8 I don't know what the first part is. But I don't
9 know of any other kiting besides check kiting so it
10 must be. "USA -- not going to pursue" -- oh, "just
11 BS," and I don't know what the next word is, and then
12 it looks like "recusal." I don't think that's my
13 writing. For one thing, I can't read it.

14 Q So the first page of this set is your
15 writing?

16 A Right.

17 Q And the second page?

18 A And the stuff on the upper corner, that's
19 my handwriting.

20 Q The notes, your initials, there up in the
21 corner?

22 A Yes, but the --

1 Q Second page is not your writing?

2 A No.

3 Q Do you know --

4 A I don't recognize it either.

5 Q Do you recall anybody saying to you that
6 the U.S. Attorney in Little Rock, Paula Casey, was
7 not going to pursue this, and that the matter was
8 just BS?

9 MR. BEN-VENISTE: I think you have added
10 something that is not in the document, that the U.S.
11 Attorney was Paula Casey.

12 BY MR. GICALE:

13 Q Well --

14 A I have no recollection of this, or any
15 discussion, or any of it.

16 Q Do you recall having a conversation with
17 Paula Casey or being told that Paula Casey was not
18 going to pursue the criminal referral C004 because
19 she thought it was just BS?

20 A The only dealings I had with Paula Casey
21 all surrounded the Hale matter, not the previous
22 referrals. So I don't recall her ever saying that,

1 about -- is it C004?

2 Q The first criminal referral that came to
3 the Department of Justice in September and October of
4 1992.

5 A Right.

6 MR. SGRO: At this point, I think it is
7 significant to note the document simply says USA and
8 being there is no date, we don't know whether it
9 could be Chuck Banks, Richard Pettus or Paula Casey.

10 MR. GICALE: Of course, that's why --

11 MR. SGRO: It shouldn't be tied to this
12 document, that's my only point, the question.

13 MR. GICALE: I mean it's a document with
14 his notes. I am just asking him a question.

15 MR. SGRO: That's fine. I just wanted to
16 clarify.

17 MR. GICALE: I understand.

18 BY MR. GICALE:

19 Q You can't recall anyone in your section
20 telling you that Paula Casey believed that that
21 criminal referral was BS?

22 A No, in those words or even discussing it.

1 The only discussions, you know, that I can recall
2 about Paula Casey and the old referral have come up
3 since these hearings have started. I don't remember
4 discussing it back at that time.

5 Q Next I am going to show you what is marked
6 for identification -- and the only identification
7 number I have on this GEM 000302. This is apparently
8 an E-mail message from you, dated October 12, 1993,
9 2:39 p.m., subject the Hale case.

10 MR. SGRO: Off the record.

11 (Discussion off the record.)

12 BY MR. GICALE:

13 Q Now, this is your E-mail message; correct?

14 A Right.

15 Q Do you know who this message went to, or
16 was it just a message to yourself?

17 A No, I am sure it wasn't a message to
18 myself, but who it was to, I don't know.

19 Q Now, in this message, you describe a
20 conversation you had with the first assistant U.S.
21 Attorney, Michael Johnson, from Little Rock; is that
22 correct?

1 A Right.

2 Q And directing your attention to the middle
3 of the second paragraph, the sentence -- the 10th
4 line starting with the words "here what they need,"
5 those words, do you see that sentence?

6 A Yes, right.

7 Q And the sentence "here what they need is
8 the underlying documents." And then it goes on to
9 say also, "the previous RTC referral last year in
10 this matter from the same RTC local lawyer was of
11 dubious value and through highly speculative
12 conclusions essentially you have a nearly useless
13 tail wagging a valuable document dog."

14 Do you know -- now, was that a verbatim
15 conversation with Johnson or was that your summary of
16 what he had been saying?

17 A I don't think this is at all verbatim. I
18 think I was just trying to get down the gist of what
19 we talked about.

20 Q And what did he say to you with respect to
21 the referral and the documents that supported it?

22 A Beyond this document here, I don't have any

24

1 memory of his exact words. I guess the point of
2 doing it was to keep some sort of record of what he
3 said.

4 Q This was a --

5 A Mostly what I remember about this period
6 was the local U.S. Attorney's Office and the FBI were
7 very frustrated because they couldn't get the
8 evidence from the RTC, and they couldn't do anything
9 until they got it. And I think this was his
10 complaining to me about it. But, his exact words, I
11 don't know how important they were. I mean I didn't
12 purport to quote him.

13 Q But in any event, he felt there was -- he
14 felt there was some importance, and it appears that
15 you agreed to obtain the documents that supported
16 this referral to pursue the investigation; correct?

17 A Right.

18 Q May I have that back?

19 A Sure.

20 Q Do you know, ultimately, did they obtain
21 those documents?

22 A I think they did.

1 Q Next I will show you what is marked for
2 identification as Bates number 0051 and I believe it
3 is 32, and this is a memo dated 12/7 and the year
4 is -- seems obliterated, but it -- but it is stamped
5 received by you on 12/10/93. It is from David
6 Margolis, associate deputy Attorney General?

7 A Right.

8 Q Do you recall this routing and transmittal
9 slip?

10 A Mostly because I have seen these documents,
11 but --

12 Q Mr. Keeney's name is on the first line;
13 correct?

14 A Right.

15 Q And then yours, in different writing,
16 appears, is on the third line?

17 A That's right. Right.

18 Q Do you know why Mr. Margolis -- first of
19 all, was this directed to you and Mr. Keeney or just
20 Mr. Keeney and you were given a copy?

21 A It looks to me like Mr. Keeney's name is in
22 David Margolis's handwriting and my name is

26

1 Mr. Keeney's writing.

2 Q Did Mr. Keeney discuss this routing and
3 transmittal slip?

4 A I doubt it. But if we did, I don't have
5 any independent memory of it. I think I responded to
6 the question.

7 Q In it he states "I know that the recusal
8 has been orally approved. Are the reasons stated in
9 Tony's memo the ones upon which the decision was
10 made?" Now, the Tony he is referring to is Tony
11 Moscato; correct?

12 A Right.

13 Q Now, he was attempting to ascertain whether
14 or not the decisions in Paula Casey's recusal memo
15 were the correct reasons, or were all the reasons?

16 A From looking at the note, yes.

17 Q As a result of this note, did you have some
18 further discussion with anyone with respect to what
19 the reasons were for Mr. -- Ms. Casey's recusal?

20 A From looking at my response, it looked like
21 I relied on my own memory and sent a response back.

22 Q What was your response?

1 A I thought that her -- well, I don't think
2 Moscato's memo -- if you have a copy of both my
3 response and his memo, it would help me here -- but I
4 don't think -- Moscato went into detail and her
5 letter was very general, didn't -- had almost no
6 detail. And I thought that the only reasons that I
7 heard from her, at the meeting that we had attended
8 in the deputy's office.

9 Q No, that was the November 3, 1993 meeting?

10 A Whatever the date was, where we had a
11 meeting in the deputy's office. I think there was
12 only one, were not the same. And like any process
13 the people go through, there are a lot of reasons and
14 there was -- I think that's probably -- I am
15 speculating here why Margolis asked the question.

16 Moscato's recollection and his note to the
17 deputy's office was different than her letter, and
18 David wanted to know what the -- what the reasons
19 were upon which the decision was made.

20 I think my recollection is memorialized and
21 my response was that there were other reasons as
22 well. I mean she focused on her relationship with

1 Governor Tucker, I think Moscato's memo mentioned the
2 Clintons. It is probably a combination of all of it,
3 plus a public perception.

4 In any event, nobody ever came back to me
5 to amplify it from my answers so there the matter
6 ended.

7 Q Was Margolis at the November 3rd meeting?

8 A I don't believe he was, no.

9 Q You were though?

10 A I was there.

11 Q So the reasons why discussed for her
12 recusal in that meeting were indeed different from
13 the memo, a copy of which came to you for her
14 recusal; correct?

15 A Her letter.

16 Q Her letter?

17 A Well, her letter was very vague and
18 general. It didn't go into great detail although it
19 probably was accurate. I mean there was a number of
20 reasons why she could have recused, and probably I
21 think she mentioned public perception. That was --
22 that was probably as good a summation of it as any.

1 Q Okay.

2 A But it was a very general statement. There
3 was no detail in it.

4 Q At the November 3 meeting, did she discuss
5 her relationship with the Clintons?

6 A Only to the extent -- I think there was
7 certainly an assumption on my part -- I don't know
8 how many other people shared it -- since I didn't
9 know her, that she must be close to the Clintons
10 because she is the U.S. Attorney in Arkansas. But at
11 some point I remember she made kind of an ironic
12 comment that she actually knew the governor, Tucker,
13 and not -- much better than the Clintons. But in any
14 event, I thought it was all kind of beside the point
15 because the public perception of whoever she knew
16 would justify her recusal.

17 Q So did she indicate at this meeting that
18 she was good friends with the governor and the staff,
19 the governor of Arkansas --

20 A I don't think she ever mentioned the
21 staff. I think she said she knew the governor and
22 his wife or she and her husband -- there was some

30

1 kind of a relationship there.

2 Q Did she also indicate to you that she --

3 A She wasn't really talking to me but I was
4 at the meeting.

5 Q Did she also indicate to the people at the
6 meeting that one of the subjects of the
7 investigation, Seth Ward, was a boyfriend of her best
8 friend and a frequent house guest?

9 A I don't remember that discussion at all.

10 Q Do you ever remember receiving that piece
11 of information from the FBI or any of the --

12 A No.

13 Q -- individuals working on the case in your
14 section?

15 A This is the first that I can recall ever
16 hearing it, but I don't know that it had anything to
17 it. I think she should have recused. And if that
18 was true, that was just one more reason that made it
19 a good recusal.

20 Q When did you first believe she should have
21 recused herself?

22 A I don't remember the first time, but it was

1 probably -- this was an easily foreseeable event, I
2 think, once you learned about it, it was not too hard
3 to foresee that she should recuse.

4 Q Well, there were discussions --

5 A Although I may have been wrong in my
6 reasons because I just made an assumption -- like I
7 say, assumption is the mother of all mistakes -- but
8 I just made an assumption that the Clinton U.S.
9 Attorney, if there was any kind of a connection,
10 would have a good reason to recuse.

11 Q Were there any discussions about her
12 recusal in September of '93?

13 A I am sure there were.

14 Q That you were party to?

15 A Oh, that's what I am talking about. I am
16 sure there were but I don't -- I don't remember to
17 whom, and probably between those of us who were
18 thinking about this.

19 Q And did you believe at that time, in
20 September of 1993, that she should recuse herself?

21 A I thought that she would, and should. I
22 didn't think there would be anything wrong in it. I

1 thought that would be the appropriate thing.

2 Q Do you know why she delayed from September
3 of '93 to November of '93 to recuse herself?

4 A No, I am not privy to that. All I know is
5 what she said at the meeting in the deputy's office.

6 Q Which was what?

7 A That she could -- this is a very
8 understandable and human reaction -- that she could
9 handle this professionally, she was a good lawyer,
10 her staff could handle it and I don't think there was
11 any dispute about that, that they could handle it.

12 The real issue was whether or not she
13 should handle it, not whether she could. And I think
14 that's, in my experience, a fairly typical reaction
15 from U.S. Attorneys, especially a brand new one who
16 has no -- who has never confronted anything like this
17 before. And it would be complete speculation, but I
18 would have to imagine that it took her some time to
19 come to that realization, that that was the right
20 thing to do.

21 Q Are you aware of any pressure she was
22 receiving to stay on the case from anyone?

1 A No.

2 Q Do you know whether or not she stated that
3 she had a close friendship with Steven Smith, on this
4 recusal issue?

5 A Refresh my memory, who Steven Smith is.

6 Q Was Steven Smith mentioned as an individual
7 that might either be a witness or potential target of
8 these investigations?

9 A The name doesn't ring any bells. My only
10 recollection of who she talked about was the
11 governor. And that was something I hadn't known
12 before or focused on and that's what I remember.

13 Q Do you know whether or not Mr. Keeney
14 indicated that he felt that she should recuse herself
15 from this case in September of 1993?

16 A I would have to guess, since I don't
17 remember anybody saying that she shouldn't recuse,
18 that Keeney felt that -- wait a minute, I believe he
19 did feel that way --

20 MR. BEN-VENISTE: In September of '93 was
21 part of that question.

22 THE WITNESS: That period of time, you

1 know, I can remember a lot of things but whether it
2 was September or October or November, I remember in
3 the House testimony, when the -- what's his -- Clark,
4 the questioner pointed out that Joanne Harris didn't
5 come in till November. I was really shocked because
6 I thought it was much earlier, but obviously it
7 wasn't. A lot of the stuff tends to blend together,
8 especially when you are dealing with it over a period
9 of time and there was no particular significance to
10 the dates.

11 But during that period of time, I would say
12 from the first time we focused on it to -- till she
13 recused, I don't remember anybody saying she
14 shouldn't recuse. And to the extent we discussed it
15 at all, it was kind of a conclusion that she should
16 recuse.

17 MR. GICALE: Can you mark this as an
18 exhibit, please.

19 (McDowell Exhibit 3 identified.)

20 MR. GICALE: For the record, we have just
21 marked a document as Exhibit Number 3. We have
22 previously indicated that Exhibit Number 2 will be

1 the copy of Mr. McDowell's errata sheet when that is
2 submitted to the committee.

3 BY MR. GICALE:

4 Q Do you recall in December of 1993 that
5 Mr. Carver had engaged in some negotiations with
6 Mr. Kendall about the production of documents from
7 Mr. and Mrs. Clinton?

8 A Generally, yes.

9 Q Do you recall that there was -- well, did
10 Mr. Carver brief you on his discussions with
11 Mr. Kendall with respect to the production of those
12 documents?

13 A Right. I mean he -- one of his jobs -- he
14 was handling it, but he would let me know what was
15 going on.

16 Q Okay. Well, describe what he was
17 attempting to do and how he was attempting to do it.

18 A To the extent I have any memory of this,
19 there was some documents that Kendall had, Kendall
20 was the fellow from Williams & Connolly.

21 Q Yes.

22 A And we wanted the documents. I think there

1 was some press speculation at the time as to what
2 happened to files from the White House. And Carver
3 was talking to him, and trying to get the documents
4 or copies of the documents, so we could look at them
5 to see if they had any significance.

6 Q Now, do you -- on September 26, 1993, did
7 you attend a meeting, with David Margolis, and Jack
8 Keeney, and Joe Gangloff, with respect to the issue
9 of a missing Whitewater file?

10 A I would be shocked if I gave the word on
11 September 26, but if that's what the date shows,
12 sure.

13 Q Well, I am going to show you Exhibit Number
14 3. And this is --

15 MR. BEN-VENISTE: What is that?

16 MR. GICALE: Exhibit 3. This was
17 provided -- the top copy, there is a letter dated
18 October 13, 1959. This is from Charles Sgro, deputy
19 counsel to the deputy Attorney General, and he has
20 attached a copy of some notes from Joseph Gangloff,
21 which Mr. Gangloff learned only recently were in
22 existence, that he did not previously provide to the

1 committee.

2 MR. BEN-VENISTE: What's the date of the
3 production?

4 MR. GICALE: The date of the production is
5 October 13th. Joe Gangloff's memo to Charles Sgro is
6 dated October 12, 1995, and attached are his notes
7 which appear to be dated 12/26.

8 MR. BEN-VENISTE: Those are what number?

9 MR. GICALE: They are Exhibit Number 3
10 because they have not --

11 MR. BEN-VENISTE: They aren't Bates
12 stamped.

13 MR. GICALE: They aren't Bates stamped.

14 MR. SGRO: Off the record.

15 (Discussion off the record.)

16 MR. GICALE: Just for the record and to
17 clarify something, I previously had marked this as
18 Deposition Exhibit Number 3, but subsequently it was
19 pointed out to us that there are indeed Bates numbers
20 A000844 through A000849 -- I'm sorry, 850 is the last
21 page.

22 As a result of some discussions off the

1 record with Mr. Ben-Veniste, I am going to reserve my
2 right to go forward and ask questions on this at this
3 point in time, and then we will just go forward with
4 some other questions, and we can perhaps return to
5 this later in the deposition.

6 BY MR. GICALE:

7 Q I am going to show you what's marked for
8 identification as Bates number 00001914, and this is
9 handwriting, appears to be dated November 2, 1993.

10 MR. SGRO: For the record, it is FBI Bates
11 stamp 00001914.

12 MR. GICALE: Right.

13 BY MR. GICALE:

14 Q Are these -- is this a copy of your -- are
15 these -- is this a copy of your notes?

16 A No.

17 Q No. Now, it bears the name Jerry McDowell
18 at the top. Someone is writing your name in at the
19 top.

20 A Jerry with a J. I am Gerry with a G but I
21 am sure they are referring to me.

22 Q Do you know whose writing it is?

1 A No.

2 Q Do you recall anyone talking with Michael
3 Johnson and Michael -- Michael Johnson indicating
4 that he wanted the DOJ goons to go to Kansas City to
5 review records?

6 A Not DOJ goons, but isn't that -- the
7 previous document that you showed me, was that
8 reflecting that. There was some discussion as to
9 whether or not U.S. Attorney's Office wanted the
10 fraud section to help, go out to Kansas City and see
11 if they could shake lose the evidence.

12 Q What's the word after DOJ on the second
13 line, if you know?

14 A I think it is "goons." I have seen this
15 document before, and I raised it with an FBI friend
16 of mine, and he said that that's an FBI term for
17 inspectors. And a damn fine term it is, too, I
18 think.

19 Q Which FBI friends?

20 A Bill Schroeder. I didn't ask him what does
21 this mean. I said have you ever heard the term goons
22 before and that's what he thought.

1 Q Do you recall whether Michael Johnson said
2 anything like this?

3 A This is news to me. I didn't -- but I do
4 recall some discussions about whether or not we
5 should -- it would help shake the records loose if we
6 sent some people out to Kansas City. And then the
7 only question is who is the "we," would it be -- AUSA
8 or someone from the fraud section.

9 Q You wanted to send someone out that would
10 be taken more seriously; is that the idea?

11 A Especially if there was a personality
12 conflict that was at the root of the problem.
13 Somebody who had no background with it might be able
14 to get the process moving.

15 Q Goons is a pretty heavy duty term?

16 A Well, I am a big guy but I hope that's not
17 the way I'm described. I guess you would have to
18 find out who wrote this and see what it means.
19 Having heard that they call their inspectors goons it
20 makes some sense, because --

21 Q But you have no idea whose writing this is
22 and you have no idea who said anything like this?

1 A Well, given the fact that it is an FBI
2 document, it is probably someone I talked to at the
3 FBI.

4 Q Now, do you recall in late 1993, November
5 of 1993, that, while you were investigating the Hale
6 case, that an issue arose with respect to the
7 delivery of some documents to Mr. Eggleston at the
8 White House?

9 A With the SBA?

10 Q Yes.

11 A Right.

12 Q Could you tell us what you know about that?

13 A I think Carver or Arterberry found out from
14 talking to somebody at the SBA that documents that
15 had been prepared for delivery to a House committee,
16 someone from the White House, I think it was -- was
17 it Eggleston or -- Eggleston? Eggleston I think --
18 had gotten copies of them, and that, you know, it was
19 disturbing.

20 Q Why did that disturb you?

21 A Well, it wasn't clear to us who the people
22 in the White House counsel's office were

1 representing, or who they were talking to, and to the
2 extent that those documents showed the theory or
3 course of the investigation, just as a general rule,
4 you don't want your internal documents and plans to
5 be out, not so much in the public, but in a situation
6 where the subjects of the investigation might find
7 out about them.

8 So it was bad enough that the SBA had sent
9 them up to the Hill, but I think that had already
10 taken place. And in any event, we didn't know that
11 the Hill was -- committee was leaking them and
12 releasing them. And that was bad enough, but the
13 thought that they were going to White House counsel,
14 just compounded the fact that the integrity of the
15 documents was being compromised.

16 Q By this time, in November of 1993, David
17 Hale had made some public allegations against the
18 President; correct?

19 A I think before that he had.

20 Q Right.

21 A I mean sometime --

22 Q Prior to?

1 A -- prior to that. I don't think these were
2 Hale's documents so much as the documents that the
3 SBA IG had gathered.

4 Q But Hale had accused the President of being
5 involved in some business dealings with Mr. Tucker
6 and this loan; is that correct?

7 A Yes.

8 MR. BEN-VENISTE: I think the question is
9 somewhat faulty.

10 THE WITNESS: Let me go back on that. I
11 don't know that Hale had ever -- I can't remember if
12 it was Hale personally or his lawyer speaking for
13 Hale, but essentially the Hale camp had said there
14 was a meeting that the President was involved in.

15 BY MR. GICALE:

16 Q Related to what?

17 A To, I think, a \$300,000 loan from his small
18 business investment company, essentially a phony
19 loan, through Susan McDougal. I mean I think that
20 was the gist of the story --

21 Q Which was somehow funneled through the SBA;
22 right?

1 A The SBA had funded this entity that Hale
2 controlled and it was supposed to go to minority
3 investments, and minority, I think, that they focused
4 on was Susan McDougal being a woman. But I think it
5 was essentially -- the story that he was peddling to
6 his lawyer was a phony story. There wasn't a real
7 loan appropriate for that investment company to make,
8 and it was intended to help out McDougal.

9 Q So, at this point in time, in November
10 1993, those allegations were out there and you were
11 working with the SBA in terms of gathering
12 information; is that correct?

13 A Primarily I think we were working with the
14 FBI, but the SBA IG was part of the process; I think
15 they were working together.

16 Q So you were disturbed to learn the
17 documents had gone to the White House --

18 A Right.

19 Q -- from the SBA?

20 A Right.

21 Q And as a result of learning that, what did
22 you decide to do?

1 A To some extent, the toothpaste was out of
2 the tube, and the question was is it possible to put
3 all or most of it back into the tube. And we decided
4 that the best thing to do was to try to return the
5 situation to the status quo, and get the documents
6 and any copies back.

7 Q And so what arrangements were made to get
8 them back?

9 A I think Carver called -- I can't remember
10 the details. We either told the SBA to tell the
11 White House to give them back, and the copies. It is
12 possible that Carver called -- I think we did it
13 through the SBA, told them to insist on a return. I
14 really have to ask Carver for the details but I think
15 that was the way we accomplished it. But I know the
16 documents were returned shortly thereafter.

17 Q Were they returned immediately or was there
18 any discussion that the White House had with someone
19 else at Justice before they were turned over?

20 A Immediately, I am not sure. I know it was
21 shortly thereafter that the documents were returned,
22 I think it was on a Sunday. Whenever this came up, I

46

1 think it was late in the week, so it was almost
2 immediately.

3 Q Do you recall whether there were
4 discussions with other Department of Justice
5 officials, discussions between the White House and
6 other Department of Justice officials above you
7 before those records were turned over to the SBA?

8 A I don't recall. I know -- I am pretty sure
9 that I alerted the deputy's office that this was
10 happening, and that we were going to take the course
11 of action. And it is possible that I -- I just don't
12 remember -- I certainly wasn't party to any
13 discussion.

14 Q Do you know if Mr. Eggleston talked to
15 Mr. Heymann about this?

16 A That I don't know. It wouldn't surprise me
17 if it happened, but I don't know.

18 Q Do you know --

19 A I mean I think one of the purposes of
20 alerting the deputy's office is, normally the
21 contacts with White House on investigations --
22 although it is not normal that they might be the

1 subject -- normally that kind of communication would
2 go through the deputy's office so it wouldn't
3 surprise me if Heymann had a conversation --
4 H-e-y-m-a-n-n.

5 Q He was the deputy attorney general. It
6 wouldn't surprise you if he had a conversation with
7 whom?

8 A With either Eggleston or somebody at the
9 White House counsel's office, but I wasn't party to
10 it and I don't remember.

11 Q Did you discuss this issue with him,
12 Heymann?

13 A I think I talked to Margolis and it is
14 possible that Phil picked up the phone. I am pretty
15 sure I had a conversation with Margolis, basically to
16 tell him what our course was, the course of action to
17 get the documents back.

18 Q Did he agree with the course of action?

19 A There was agreement with everybody in the
20 department that we should get the documents back and
21 not have our documents in the White House counsel's
22 office.

1 Q Do you recall the circumstances surrounding
2 the return of them to the SBA, return of the
3 documents?

4 A Well, all I know is what I was told by
5 Allen, but I think it was kind of goofy in a way.

6 Q Kind of goofy?

7 A Goofy. I mean on Sunday morning, someone
8 from the White House counsel office -- it might have
9 been Eggleston -- shows up and sort of drops the
10 documents off on the curb to the fellow from the IG.
11 But that's, as I said, just what I heard. I wasn't
12 there.

13 Q Do you recall whether or not the documents
14 were inventoried in any way?

15 A I would hope that the IG did it, but again
16 I never heard there were any missing, so --

17 Q Was there any decision to interview people
18 from the White House with respect to the receipt of
19 these documents?

20 A I think at that time, we were planning to
21 interview them on a couple of things, and that was --
22 not a major part once we get the documents, but it

1 would have been something we followed up on.

2 Q Do you know whether or not you received all
3 the documents back that the SBA believed it had
4 turned over to them?

5 A No, I don't. I mean that was -- as I said,
6 I never heard that we didn't, and that would have
7 been one thing I'm sure that we checked up on, but I
8 didn't do it.

9 Q Now, you indicated there was a plan to
10 interview witnesses at the White House with respect
11 to this matter and some other matters; is that
12 correct?

13 A Right.

14 Q Do you know which individuals you planned
15 to interview at the White House?

16 A There were four lawyers in the counsel's
17 office.

18 Q Do you know which ones?

19 A You would have to go through the names. I
20 think Eggleston was one of them.

21 Q Kennedy, was he another?

22 A Yes.

1 Q William Kennedy?

2 A The one who got the phone call from the
3 defense attorney.

4 Q William Kennedy?

5 A Yes. I think we might have. At one point
6 we would interview them all, but what steps we took
7 before we got out of the case to accomplish that, I
8 am not positive.

9 Q Was there a decision to interview
10 Mr. Lindsey as well?

11 A I think he was one of them.

12 Q Do you recall --

13 A My recollection is there were four, and I
14 don't know if Nussbaum was the fourth or whether it
15 would have been four plus Nussbaum. Basically whose
16 ever name had come up during that period of time, we
17 probably were going to interview.

18 Q Now, did you complete that interview
19 process while you were handling the case?

20 A I don't remember if we even began it. I
21 know we were planning to do it, but whether or not it
22 started to take place -- I think the FBI was going to

1 talk to them and maybe we would follow up with the
2 grand jury, but that was just about the period of
3 time the press started speculating about getting an
4 independent counsel, and it was pretty clear that
5 sooner rather than later, we would be turning the
6 case over to an independent counsel, which in fact
7 happened and -- not a statutory independent counsel
8 but a -- Fiske. And I can't remember how much, if
9 any, of that process we accomplished by the time we
10 turned it over. That was one of the things we were
11 work --

12 Q Did you see any reports which summarize the
13 interviews of those witnesses?

14 A No.

15 Q You don't know whether or not it ever
16 occurred?

17 A No. I know it was something we planned to
18 do, but how far we had gotten down that road, I don't
19 remember.

20 MR. GICALE: I believe that's all I have at
21 this point. I'm reserving my right to go back to the
22 initial Exhibit Number 3, after your

1 cross-examination, or your questioning.

2 EXAMINATION

3 BY MR. BEN-VENISTE:

4 Q Mr. McDowell, you were questioned earlier
5 about having spoken to various colleagues of yours at
6 the Department of Justice prior to testifying here,
7 Mr. Carver, and Mr. Mackay, Mr. Gangloff. And that
8 you had looked at the chronology that Mr. Carver had
9 prepared. Is that so?

10 A Right.

11 Q Do you regard that this was something that
12 you needed to do on a furtive basis, that there was
13 something inappropriate with your having had such
14 conversations?

15 A No, I mean I didn't have any problem
16 talking about it here, and didn't have any problem
17 doing it. As far as I know, the committee hasn't
18 asked witnesses not to talk.

19 Q Indeed, as a trial lawyer and supervisor of
20 trial lawyers for many years now, you know that it is
21 a regular procedure for prosecutors, in trying to
22 refresh witnesses' recollections and get the best

1 recollection from the witness, will confront
2 witnesses with the version of the events of different
3 people; isn't that so?

4 A That happened right here a few minutes ago
5 with the FBI document.

6 Q It is not inappropriate to show one witness
7 or describe to one witness the testimony of another
8 witness with a hope that, in this process, you can
9 get the best version of events possible; correct?

10 A I think that is appropriate.

11 Q And indeed, in connection with your
12 conversations with Messrs. Carver, Mackay and
13 Gangloff, there may have been something in those
14 conversations or in reviewing the chronology of
15 Mr. Mackay that helped your recollection --

16 A Mr. Carver.

17 Q Mr. Carver, that helped your recollection
18 of events about matters under discussion?

19 A Theoretically, yes. In practical terms, I
20 am no more enlightened now than I was before, but I
21 think that's always possible.

22 Q But from the standpoint of the process,

1 there isn't anything wrong with it and you have been
2 the head of the section in the Justice Department
3 that deals with professional responsibility and
4 appropriate conduct?

5 A Yes. As the head of the public integrity
6 section, that's right. I think the only time it
7 would be improper is if the people doing it had an
8 improper motive.

9 Q Right.

10 A And that really -- you can say that about a
11 lot of things. Otherwise something that's normal and
12 appropriate could take on sinister intent if people
13 have bad intent, and could be very good if people
14 have good intent, and sometimes it is just neutral.

15 Q Now, turning to the events under discussion
16 here, let me ask you first whether there came a time
17 when Irv Nathan reported that he had been contacted
18 by an individual who provided him with information
19 about what Mr. Hale had to say about certain
20 transactions?

21 A That's right.

22 Q Did you speak to Mr. Nathan directly about

1 that?

2 A Yes.

3 Q And what did Mr. Nathan tell you?

4 A Well, I can't remember it word for word.

5 Q In substance.

6 A But, in substance, he had talked to
7 somebody, he didn't want to identify the person, who
8 gave him this information, that it was coming from
9 Hale or his lawyer. And that Nathan had a concern
10 that the department, including the U.S. Attorney's
11 Office, better be handling this properly, and wanted
12 us to look into it to make sure that it was, that we
13 weren't passing up an opportunity to develop Hale as
14 a witness, and however the U.S. Attorney was handling
15 it was appropriate.

16 Q Now, did you find it somewhat unusual that
17 Mr. Nathan did not want to reveal the source of that
18 information?

19 A You know, in a sense, the whole thing was
20 kind of like a singular event, but I thought it
21 probably -- I thought he was being overly punctilious
22 of the feelings of someone I think comes to the

1 Department of Justice and tells me a story, basically
2 that the name is not going to come out until they get
3 some promise of confidentiality. But on the other
4 hand, it wasn't so much the identity of the person
5 who told him, but I don't -- I believe -- I think he
6 made it clear that that person didn't have any
7 firsthand knowledge.

8 The key thing was someone had come to the
9 department and said there is something that is going
10 on in Little Rock that you should be aware of and
11 look into. And the important thing was somebody
12 looked into it, not who it was that whispered it in
13 Nathan's ear.

14 Q Eventually, Mr. Nathan identified his
15 source as being Jeff Gerth of the New York Times; is
16 that right?

17 A Yes.

18 Q Who encouraged him to reveal who this
19 source was?

20 A I don't know that there was an
21 encouragement. I think when he saw the exchange
22 of -- not -- I think, my best recollection is when he

1 saw the exchange of correspondence with the FBI, and
2 realized that Gerth had been talking to the FBI as
3 well, that there was no need for confidentiality,
4 that he told -- I think he told me, but I think he
5 also told Keeney.

6 Q And this was in November?

7 A October. I think it was earlier.

8 Q September?

9 A I think it was September. It was the first
10 I really knew anything about Hale, and what the U.S.
11 Attorney's Office was doing.

12 Q Now, on the basis of what Mr. Nathan told
13 you, and what you subsequently learned from the FBI,
14 it was clear that Mr. Hale and his counsel,
15 Mr. Coleman, were providing substantive information
16 to Mr. Gerth of the New York Times?

17 A Right.

18 Q And this was at a time when Mr. Coleman was
19 resisting the request of the U.S. Attorney's Office
20 in Little Rock to make a proffer?

21 A That's correct.

22 Q And on that basis, did you have any notion

1 other than that Mr. Coleman was orchestrating this
2 series of events, rather than Mr. Hale going off and
3 talking to a reporter without his lawyer knowing
4 about it?

5 A After we checked into it, I think I came
6 fairly quickly to that belief, that the lawyer was --
7 this was a tactic that the lawyer was using, rather
8 than client going off on his own.

9 Q Would you say that Mr. Coleman, on behalf
10 of his client -- I am not suggesting he did anything
11 improper, or unethical -- but that he was playing a
12 game of hardball?

13 A Right. I think the strategy that he was
14 using was one that could have worked, but I didn't
15 think it was likely to work.

16 Q So the idea was, as far as you could
17 perceive it, for Mr. Coleman to put pressure on the
18 Justice Department to try to strike a deal for his
19 client whereby his client would get immunity, or at
20 least a misdemeanor plea, without coming forward and
21 making a detailed proffer in advance of doing that?

22 A Or pleading guilty to a felony, right.

1 Q And that strategy conflicted, did it not,
2 with the way the Department of Justice goes about
3 business in plea negotiations?

4 A I think, generally speaking, that's
5 correct.

6 Q Did you conclude that the U.S. Attorney's
7 position was the appropriate one in demanding that a
8 proffer be made prior to entering into plea
9 negotiations?

10 A Yes.

11 Q And could you elaborate on that?

12 A Well, I think whenever the government
13 prosecutor is so eager to make a deal that they give
14 immunity or they take some kind of -- take an
15 irrevocable position before they find out what the
16 other side is going to give them, they completely
17 ruin the incentive for basically a criminal to be
18 candid with them after the deal is made. And they
19 often overplay their hand, they give away much too
20 much when they don't have to. And they may find out
21 the only story the person has to tell is the person
22 is criminal; the rest is just smoke and there is

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1 nothing they can do about it.

2 Q So the purpose to get a proffer is to be
3 able to dispassionately evaluate the information that
4 the subject of the investigation is offering to
5 provide to determine whether it is valuable?

6 A Right.

7 Q Depending on the value of the information
8 and various other factors associated with the
9 criminal and his offense, one would come to a
10 conclusion about an appropriate plea negotiation?

11 A Right.

12 Q And did you come to the conclusion in
13 connection with Mr. Hale that the government could be
14 in a position of securing a felony conviction for
15 Mr. Hale and receiving such cooperation as he was
16 capable of giving as well?

17 A Right. As far as I knew, the case against
18 him was strong; at least that was the belief in the
19 U.S. Attorney's Office. And it looked like they
20 could have their cake and eat it too; they will get
21 Hale as a criminal and get him as a witness.

22 Q And you regarded that as completely

1 appropriate and the right strategy to follow?

2 A That's right.

3 Q Now, in addition to playing hardball with
4 the press and putting Paula Casey on the spot through
5 his complaints about Paula Casey, were you aware of
6 the fact that Mr. Coleman made some approach to the
7 White House directly to suggest that the White House
8 somehow interfere with the prosecution of Mr. Hale?

9 A I don't know if I was aware of all of that,
10 I remember at some point, I think, down the road,
11 there was a story in either the Washington Times or
12 the Wall Street Journal, some newspaper, that
13 suggested that Coleman had called the White House.

14 Q And --

15 A But the rest of what you said, I just don't
16 remember.

17 Q Do you recall Mr. Mackay confirming that he
18 had spoken to Mr. Coleman about that, and that
19 Mr. Coleman had confirmed that he had made such a
20 call?

21 A I don't recall it but it sounds like -- we
22 learned of it somehow, so.

1 Q And in connection with that kind of an
2 approach, is it consistent with your experience that,
3 given a basis to return an indictment, the return of
4 an indictment is a very eloquent answer to the
5 suggestion that influence be used?

6 A Absolutely.

7 Q And that, in fact, was done in this case,
8 was it not?

9 A Right.

10 Q There has been some suggestion raised that
11 Mr. MacDougall -- with two l's, M-a-c --

12 A My MacDougall.

13 Q McDowell's MacDougall, was somehow
14 insufficiently qualified to evaluate the first RTC
15 referral that was received in 1992, relating to
16 Mr. and Mrs. McDougal, among others. Could you
17 explain your evaluation of Mr. MacDougall at that
18 time in the Justice Department?

19 A Yes, I don't know -- there may be a
20 suggestion but I doubt it is from anyone who knew
21 him.

22 Q Pardon me?

1 A I said if there was such a suggestion he
2 wasn't qualified, I doubt it is coming from anybody
3 who knew him.

4 When he had been assigned to the Dallas
5 bank fraud task force, which was a highly successful
6 operation that the fraud section had going in Dallas,
7 and all they did was S&L and bank fraud work. And
8 the first time I had ever seen MacDougall, he gave --
9 when I first come to the fraud section, he had given
10 a lecture with another lawyer about a case that he
11 had. We all had a brown bag, and I thought he was
12 pretty sharp. He looked like someone who knew what
13 he was about. And both Carver and Arterberry told me
14 that they liked him, too.

15 About that time he -- I guess it would have
16 been '92 -- he was transiting out of Dallas and going
17 up to Boston where we had a task force operation, and
18 I thought that was a -- gave added strength to the
19 Boston office, somebody with that experience in
20 Dallas. And occasionally we would talk when he was
21 in town, and I always thought he was a pretty sharp
22 fellow.

1 Q Let me draw your attention to that period
2 of time in late 1992. What was the level of, volume
3 of the referrals coming into the various U.S.
4 Attorney's Office and the Department of Justice from
5 the RTC at that point?

6 A It could have been in the thousands,
7 because my recollection was that there was an
8 inventory of around 10,000 referrals. How often they
9 came in a month, I don't remember, but I remember the
10 accumulation of them was a real management problem
11 because we weren't going to get any more resources
12 than what we already had; and it looked like a long
13 row to hoe to be able to go through them all.

14 Q And in terms of eval --

15 A By the way, I think that was like 10,000 of
16 the big cases, not all -- I don't know how many there
17 were in total, but my recollection is that there was
18 about that many major cases pending.

19 Q You had the opportunity to review
20 Mr. MacDougall's analysis of the materials he had
21 been sent to review in terms of the criminal referral
22 from the RTC which has been designated C0004;

1 correct?

2 A Correct.

3 Q Do you find fault with his analysis, as you
4 sit here today?

5 A I know Mr. Clark asked me a number of
6 questions about would you be surprised if you saw --
7 I haven't gone back and looked to see, if I would
8 have been surprised. I thought at the time, and I
9 still think now, that it was a pretty good summary of
10 what the case was about. It basically told me what I
11 needed to know, and so, no, I don't find fault. But
12 if I went back in detail, as Mr. Clark did, I may
13 have a nit to pick or a quibble, but as an overall
14 piece of work it is what I wanted.

15 Q On the big ticket issue you wanted to know
16 what, in order to make a determination?

17 A I wanted to know what -- just to put the
18 recusal request in some context, I wanted to know
19 what was the referral all about, and basically that's
20 what MacDougall answer told me. He told me what it
21 was about and what his assessment of it was.

22 Q And how long have you been evaluating

66

1 prosecutions that come from other agencies, or
2 requests for prosecutions?

3 A Well, probably since 1967.

4 Q So, you have had a little bit of experience
5 in this area?

6 A Right.

7 Q And in connection with the threshold for
8 the RTC making these referrals, could you talk a
9 little bit about that in this time frame, again late
10 1992?

11 A I think there was a -- more than anything,
12 there was a general notion that we wanted the RTC to
13 refer at a relatively low level, and that was not
14 uncommon for IGs generally, that a referral would be
15 made to the prosecutors on a much lower level than,
16 say, the FBI would refer a case.

17 Mostly to make sure they didn't miss
18 anything, that if there was anything about a case
19 that made it stand out from the normal civil work
20 that they were doing, they ought to refer it, so that
21 the FBI or the U.S. Attorney's Office, or in some
22 cases, the fraud section could take a look at it to

1 evaluate it. But there was never any expectation
2 that there would be a prosecution on every referral.
3 In fact I think it was quite the opposite.

4 And that process, although the fraud --
5 what is known as the fraud section, in bank frauds
6 was a new experience to me, it wasn't much different
7 than public integrity section taking referrals from
8 inspector generals, where there was a similar low
9 level -- low threshold of referral.

10 Q Was there some process that was instituted
11 at some point in time to have the RTC referrals
12 reviewed by lawyers at the RTC rather than coming
13 directly in from investigators?

14 A That I don't know.

15 Q With respect to the information that you
16 had received from Ms. Casey about what was going on
17 in Little Rock, Exhibit 4656 which are your notes of
18 your conversation with her principal deputy, Michael
19 Johnson, of November 2, 1993, more or less reflects
20 the state of your knowledge at the time you had the
21 meeting with Ms. Casey; would that be fair to say?

22 A Yes.

1 Q And would it also be fair to say that, from
2 your vantage point, having had decades of experience
3 with these kinds of issues, that you saw Ms. Casey to
4 be in a no-win situation?

5 A Absolutely.

6 Q Did you get the sense from talking to
7 Mr. Johnson, and later to Ms. Casey, that she was
8 trying to do the right thing and find her way through
9 some pretty hard questions?

10 A Yes, especially when I met with her, I felt
11 a little sorry for her. But --

12 Q She was under attack by Coleman who was
13 mounting this campaign with Jeff Gerth and the New
14 York Times and the local newspapers, as is reflected
15 in this memorandum, to discredit her and her office
16 as being incapable of making a fair decision. She
17 was reacting to that in a pretty human way, that she
18 was a person of high integrity and good repute, and
19 felt that she could and her office could make
20 reasonable decisions, and correct and ethical
21 decisions in this matter?

22 A That's correct.

1 Q But from your vantage point, you saw that,
2 whichever way she decided, she would be subject to
3 criticism?

4 A Absolutely. I think there is a -- for no
5 good reason but whenever you recuse, there is
6 almost -- if there is any publicity in it, it is
7 always presented in an unfavorable light, and that's
8 unfair. If you do the right thing and recuse, people
9 hold it against you, and if you hang in there and
10 don't recuse, people will hold it against you. And
11 it really is a no-win situation and for someone who
12 had just become a U.S. Attorney, I felt sorry that
13 fate had dealt her that hand, but nevertheless,
14 that's -- it was dealt to her and she had to handle
15 it.

16 Q And then with the help of experienced
17 people at the department, Phil Heymann, yourself,
18 Jack Keeney, others, really took her to school on why
19 you felt this was a no-win situation, and she got
20 that message; is that fair?

21 A That's essentially correct, yes.

22 Q Did you have any sense that Ms. Casey was

1 acting improperly or for some untoward motive in
2 connection with this whole issue?

3 A No.

4 Q Now, you were advised, were you not, that
5 the RTC was being intransigent in terms of providing
6 the underlying documents to the nine criminal
7 referrals that had been sent over to the U.S.
8 Attorney's Office?

9 A Right.

10 Q And would you regard it as unusual for a
11 criminal referral to be made, but for the underlying
12 documents, which are supposed to support that
13 referral, to be withheld?

14 A Well, this issue didn't come up often. It
15 didn't come up at all before. No one ever complained
16 I can't do this case, but having focused on it, I
17 thought it was unfortunate and it may well be unusual
18 given the charged atmosphere in the case.

19 Q Now, did you have occasion to ever talk to
20 the SAC, or the supervising agent in charge, in
21 Little Rock with respect to the issue of the RTC
22 investigators and their activities in connection with

1 this matter?

2 A Well, I never talked to the SAC and -- what
3 was it, Irons --

4 Q Was the supervisor?

5 A I can't remember whether I ever talked to
6 him on the phone. I think not. I think mostly all
7 of my contact was through FBI officials in Washington
8 or by my own people talking to him.

9 Q On the basis of the information that you
10 learned, did you understand there to be a question
11 about the motives and intentions of at least some of
12 the RTC, one or more of the RTC personnel involved in
13 this matter?

14 A I think there was a sense both in the U.S.
15 Attorney's office and the FBI's of an "us against
16 them," but how valid it was in retrospect, I don't
17 know. I think they were frustrated they hadn't
18 gotten the evidence they wanted.

19 Q There was also an issue about leaks and
20 another issue about an attempt by an RTC investigator
21 repeatedly to try to bump the FBI agent, charging
22 them for information about the FBI's intention?

1 A I don't remember the latter part as much as
2 about the leaks part.

3 Q What do you recall about the leaks,
4 Mr. McDowell?

5 A That there were things appearing in the
6 papers about referrals, and it was frustrating for
7 the U.S. Attorney's Office and the FBI because they
8 couldn't even respond internally about the stuff that
9 everybody could read in the newspaper because they
10 didn't have the document -- the evidentiary
11 documents, and they felt they were being
12 manipulated.

13 Q And when you suggested that it might be a
14 good idea to send some people to the RTC to try to
15 shake loose the documents, I think was the expression
16 you used, you thought that that was a step that would
17 be appropriate in the circumstances?

18 A Right.

19 Q Was there any valid reason that you could
20 see for the RTC not to supply those documents?

21 A Well, you know, lots of times there will be
22 real tempests in a case that when you step back from

1 it, it is mostly a lack of communication. Only
2 sometimes there are really good reasons for tempests
3 in a case. I know the RTC had their own interest,
4 not so much their own but this case, they had civil
5 cases to protect, and there might be a lot of reasons
6 why they weren't providing the evidence, other than
7 something sinister.

8 And it just seemed to me that having
9 somebody like an Allen Carver or somebody go out to
10 Kansas City, someone who was very used to dealing
11 with the RTC might see that they had a good point and
12 sort of mediate, so that the suspicions would lessen,
13 or on the other hand, if there was no good reason,
14 somebody who would know by experience there was no
15 good reason and to be able to explain in Washington,
16 to get the process moving.

17 Q That's my next question. At the end of the
18 day, after the documents were obtained, did you find
19 that there was any good reason for them having been
20 withheld?

21 A None ever surfaced, but I don't think I
22 pursued it once we got the documents. My main focus

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1 was getting the process moving.

2 Q So in summary, while theoretically there
3 may have been some good reason, none was ever brought
4 to your attention?

5 A Right, and it wasn't a trail that would
6 have been fruitful to pursue at that time.

7 Q On the basis of what you learned about the
8 status of the Hale investigation, and the issues that
9 you've testified about relating to the strategy that
10 Hale's lawyer had undertaken, and the responses of
11 the U.S. Attorney's Office prior to the time that
12 Mr. Mackay was assigned responsibility for the Hale
13 case, do you identify any harm that came to the
14 Department of Justice's position as a result of the
15 way the U.S. Attorney's Office handled the matter?

16 A No. I don't think they were harmed at
17 all.

18 MR. BEN-VENISTE: Let me suggest a
19 five-minute recess to go through this and see if we
20 can wrap up. Maybe you can also check.

21 MR. SGRO: You can check.

22 MR. GICALE: If I can get ahold of them.

1 (Recess.)

2 BY MR. BEN-VENISTE:

3 Q Mr. McDowell, as a general matter, could
4 you say whether there was any pressure exerted on you
5 or any of your colleagues at the Department of
6 Justice, to the best of your knowledge, to treat
7 either the investigation involving Mr. Hale or the
8 investigation involving Madison in any improper way?

9 A No, there was no pressure to treat either
10 of those cases in an improper way.

11 Q Did anyone suggest at any point to you or
12 to any of your colleagues, to the best of your
13 knowledge, that political considerations should
14 determine the result or the process of what you were
15 doing?

16 A No.

17 Q Now, in connection with the SBA transmittal
18 of the materials they sent to Congress at the
19 request, I believe, of Representative LaFalce, who
20 was at that time chairman of the House committee,
21 whatever the specific name of it was that had primary
22 oversight responsibility over the SBA, did you feel

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1 that it was improper for the SBA to have complied
2 with the request for information relating to that
3 matter?

4 A Well, I think it was over and done with by
5 the time I found out about it.

6 I was mildly surprised, I think, but not
7 shocked. I think if it had been the FBI, they
8 wouldn't have done it, but the SBA, being, you know,
9 an agency that's not a law enforcement agency, it was
10 surprising but not shocking that they did it. I wish
11 they hadn't done it.

12 Q Did you identify any improper motive,
13 either at the SBA or in connection with the
14 Congressional request, relating to that issue?

15 A No. I think there is always a concern
16 about leaks and publicity whenever there is a --
17 documents compiled for an investigation given to a
18 body that's not a law enforcement agency. But until
19 you see the leaks, you generally give the benefit of
20 the doubt to the committee, or whatever.

21 Q Is it fair to say that, at this point, that
22 the leaks of information relating to Mr. Hale's

1 matter, which was the SBA part of this investigation,
2 had been orchestrated by his counsel?

3 A Well, that was certainly my impression, I
4 mean, since Gerth said he got the information from
5 Coleman.

6 Q And under those circumstances, did you
7 think it was unusual that Congress would want to have
8 a look at the same matter?

9 A No, I -- you know, they were learning
10 things the same way we were, by reading the
11 newspapers, and I thought it was a natural reaction.

12 Q At the point where it was clear that the
13 SBA had sent material over to Congress at the request
14 of Congress, did you see, in and of itself, any
15 impropriety associated with the White House
16 requesting the same material that had been sent over
17 to Congress?

18 A I think if this had been a different case,
19 it would have been a natural reaction. I mean I
20 don't know what the White House's relationship is
21 with the SBA, but it is certainly reasonable that if
22 the executive branch finds out the legislative branch

1 is interested in something, they want to know what
2 the something is.

3 I think what made this unusual, and took it
4 out of the ordinary was the fact that the White House
5 counsel pretty much had actually been involved in
6 this, and it affected -- according to Hale's story,
7 anyway, he said he had had a meeting with the
8 President -- the sort of thing that I think prudence
9 would have dictated that they not get directly
10 involved in.

11 Q It is more a question again of the
12 appearances involved, but not the substance of the
13 material itself?

14 A Well, that's a primary question. Sort of
15 like when we started this morning and you found out
16 that I had talked to Mr. Carver and engaged in a
17 number of questions. I suppose I could have avoided
18 them all if I just hadn't talked to Carver or Mackay
19 or Gangloff. But it raises questions, and -- that
20 seemed to be a very unnecessary exercise.

21 Q So from your point of view, you thought it
22 would be useful if the White House counsel's office

1 returned the materials that they had received from
2 the SBA to --

3 A So they couldn't take advantage of it in
4 any way. They just had to forego that opportunity.

5 Q By taking advantage, you mean being
6 informed about it?

7 A Yes. I don't know these people; they are
8 just names to me. I don't know who they are and what
9 they are like. I thought like when you are
10 dealing -- I am not trying to trivialize this but
11 when you are dealing with children, if you just take
12 the opportunity for mischief away, everybody is
13 better off. And that was the rationale behind
14 getting the documents back.

15 Q You felt more comfortable if the documents
16 were back at the SBA, or with the department?

17 A Right, that's correct.

18 Q And did anyone resist that suggestion from
19 the White House, to your knowledge?

20 A Since I wasn't privy to the discussions, I
21 don't -- it didn't seem like they resisted because we
22 got them right back, but whether or not they hemmed

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1 and hawed, I just don't know.

2 Q And there's been something made of the fact
3 that the documents were returned by someone from the
4 White House -- I don't know if it was Mr. Eggleston
5 or somebody else -- on a Sunday, to or from church,
6 meeting somebody from the RTC, I guess. Did that --
7 I'm sorry, from the SBA, I misspoke. Did that
8 impress you as some kind of impropriety?

9 A Well, I guess I was happy that they did it
10 speedily and they didn't wait until the next business
11 day, so that was good. But, you know, it would have
12 been nice if some uniformed courier had come in to
13 the building. I don't even know if the building was
14 open. Mostly just to avoid -- it was -- you know, it
15 was just -- made us giggle more than anything else
16 but I was happy we got them back. Goofy was I think
17 the way I described it, but not goofy -- more like
18 Goofy the cartoon character than anything else.

19 MR. BEN-VENISTE: I have nothing further.
20 Thank you.

21 EXAMINATION (Continued)

22 BY MR. GICALE:

1 Q Mr. McDowell, this wasn't just a question
2 of appearances with respect to the documents going to
3 the White House, you had allegations from Mr. Hale
4 against the President of the United States relating
5 to some SBA funds; correct?

6 A Yes, he made an allegation at one meeting
7 he had with MacDougall, the President sat in, and you
8 know, while we were in no position to judge his
9 truthfulness because it was the kind of spectacular
10 thing that he could throw out trying to get an
11 advantage as long as he made the advantage, it was
12 there, and it was something we wanted to follow up
13 on.

14 Q And while this allegation was before you
15 and while you were attempting to follow it up,
16 suddenly the White House has copies of SBA documents,
17 they are requesting SBA documents; correct?

18 A Right. And I think it is prudent to make
19 sure, even if their motives were pure or not, to
20 remove the situation so that -- not only the
21 appearance but the actuality of the problem couldn't
22 happen.

1 Q Whether it was President Clinton or
2 Mr. Sgro over here, or anyone else in this room, you
3 wouldn't think it appropriate for anyone, where there
4 is an allegation like this, to have in their custody
5 documents perhaps relating to the allegation;
6 correct?

7 A Right.

8 Q And you said because you didn't want to
9 risk any chance for mischief, what are you talking
10 about?

11 A Well, I think the whole range of
12 possibilities. We were in no position to know
13 whether it was just an appearance problem or anything
14 else. But if you got the documents back, it didn't
15 make any difference, nothing could have happened,
16 there would be no flow of information.

17 We had read that Coleman had called the
18 White House counsel. I was never aware that they had
19 initiated a call back. But as long as we had the
20 documents and they couldn't make use of them, there
21 would be no danger, at least from that source, and we
22 hoped similarity that the House committee didn't

1 start publishing the documents either.

2 I don't even know what was in the documents
3 but, generally speaking, we didn't want the thoughts
4 of the investigators and the evidence that they had
5 gathered to become part of the public record or get
6 back to Hale or his counsel.

7 Q Going back for a minute to investigative
8 techniques, as a prosecutor, why do investigators
9 interview witnesses separately?

10 A I think it is primarily to catch the
11 reflections and memory of the witness sort of in a
12 pristine state.

13 Q Uninfluenced by some other people that they
14 may be with?

15 A Yes, but it is also not unheard of -- it
16 depends on what stage of the investigation they are
17 at. I have heard of people who would get groups
18 together and try to come up -- because oftentimes one
19 person can't remember everything but their memory,
20 oh, yes I talked to you. No, you didn't, you talked
21 to him, that kind of give and take.

22 So it really depends on what stage and what

1 the purpose of the investigator is, what his motive
2 is at that point, how he would do it. Oftentimes
3 it's a matter of logistics, you can talk to one
4 person and it is hard to get everybody together in
5 one room.

6 But I think, generally speaking,
7 one-on-ones are the most common, and much less common
8 would be group interviews.

9 Q Okay. And the improper motive you referred
10 to earlier that you would be concerned about would be
11 what, if witnesses were talking to each other?

12 A Well, I think if people felt that they had
13 to come up with a story as opposed to the story. I
14 mean if the motive for the witnesses is what the heck
15 happened; can you remember, that seems to be benign,
16 helpful, to an investigation.

17 If you've got a bunch of people who are
18 conspiring to come up with the story and tailor their
19 testimony, then that's an improper motive, but no
20 matter what your motive you still have people talking
21 together and that's why it is important to know why
22 people talk.

1 Q I am going to refer you again to Exhibit
2 Number 3. And again, this was Bates numbers A0000844
3 through A000850. I will say, at the moment, there
4 are two letters attached to this exhibit, a letter
5 dated October 13, 1995 from Mr. Sgro to Robert
6 Giuffra, and also a memoranda, Department of Justice
7 memorandum from Joseph Gangloff to Charles Sgro,
8 dated October 12, 1995.

9 I am going to ask that you take an
10 opportunity to review, those documents.

11 MR. GICALE: Do you have a copy?

12 MR. BEN-VENISTE: I don't have a copy.

13 THE WITNESS: I am having a lot of trouble
14 making this out.

15 MR. SGRO: Off the record a second.
16 (Discussion off the record.)

17 BY MR. GICALE:

18 Q Mr. McDowell, you have now had an
19 opportunity to review these notes, and just so the
20 record is accurate, are they your notes?

21 A No.

22 Q Do you know whose notes they are?

1 A Well, according to the letter, it is Joe
2 Gangloff's.

3 Q After reviewing these notes, do these notes
4 refresh your recollection with respect to a meeting
5 you may have had with Joanne Harris, Jack Keeney, Joe
6 Gangloff and David Margolis on December 26?

7 A I remember having a meeting with Joanne
8 Harris and these people and to that extent, yes, it
9 is sort of -- I don't know if it refreshes my
10 memory. I didn't realize it was December 26, so in
11 that sense it does.

12 MR. SGRO: For the record, the date could
13 be December 20th, on top -- I mean it is kind of
14 hard.

15 THE WITNESS: But I do remember a meeting.
16 I just don't remember the day.

17 BY MR. GICALE:

18 Q And what was the purpose of the meeting?

19 A I think Joanne Harris wanted to go over
20 various things that had come up, I think publicly,
21 press items, to make sure that we were following our
22 leads.

1 Q There is a reference in here to the Hale
2 trial in mid-January; did you update her on the
3 status of the trial?

4 A I am sure I would have told her that. I
5 don't have an independent memory of it, but if we all
6 met together just for accounting where we were, I
7 would have told her.

8 Q Do you recall a discussion with respect to
9 a missing Whitewater file?

10 A Yes, I remember going to see Shaheen after
11 the meeting. I was trying to think of why I did it,
12 and my best recollection is that there had been a lot
13 of press speculation about Vince Foster and
14 Whitewater files, and we were trying to see if we
15 could get a handle on what it all meant and did it
16 have any relevance to our investigation.

17 Q And so did you discuss this missing
18 Whitewater file in this meeting, or was it discussed
19 with Shaheen later?

20 MR. BEN-VENISTE: What missing Whitewater
21 file? I don't even know that there was a missing
22 Whitewater file. There was --

1 BY MR. GICALE:

2 Q Did you discuss the claim?

3 A We discussed it briefly. I don't remember
4 knowing what it was about but trying to get a handle
5 on what the press was talking about.

6 Q Well, was it -- it was a press claim that
7 there was a missing Whitewater file?

8 A That's my best memory. I don't think we
9 had any independent knowledge of a missing file. I
10 think it was -- there were articles in the Washington
11 Times or something like that.

12 Q Did you also discuss the interview of the
13 witnesses, excuse me, of Kennedy, Lindsey, and
14 Eggleston?

15 A I don't know. There are notes on the page
16 that refer to it. This is hard to read. "Fraud,
17 SBA, Lindsey, interview today."

18 I guess we did, if that's what he's got
19 down there. I don't remember that specifically.

20 Q So were you giving them an update on the --
21 looking into the issue with respect to the turning
22 over of documents to the White House, Mr. Eggleston,

1 from the SBA --

2 A Whatever was on the table right around the
3 time of that meeting, we would have briefed the
4 assistant AG on. Joanne Harris was the Assistant
5 Attorney General and our boss.

6 Q Who was saying there was a missing
7 Whitewater file or there was an issue of that, was it
8 you?

9 MR. BEN-VENISTE: You can -- he just said
10 it was the Washington Times. You can put whatever
11 value on that --

12 THE WITNESS: It was something we all had
13 read in the paper. Some things you read in the paper
14 are right on the money and some things are lunatic
15 speculation, but you don't know until you think it
16 out. I think that was the flavor of the meeting.

17 BY MR. GICALE:

18 Q On the top of the next page, it says "try
19 get Whitewater file"; what was that about?

20 A Well, I think if there was a missing one,
21 try to get it.

22 Q And "Park Police did not have custody"; who

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1 does that refer to?

2 A Remember when Foster, after Foster
3 committed suicide, there was a -- they all, the Park
4 Police and the -- tried to gain control of his
5 office, and they met with the White House counsel.
6 In any event, they had some material but they didn't
7 have any missing Whitewater file; trying to piece
8 together from these notes what we were talking
9 about.

10 Q So there was an agreement after this, since
11 there were these allegations out there, to attempt to
12 determine whether or not there was a missing
13 Whitewater file; is that correct?

14 A Or to find out what we could about any
15 files, just to the extent that they might have some
16 relevance to our investigation, whether they were
17 missing or not missing.

18 Q Was there any other information, other than
19 the information in the Washington Times, with respect
20 to a potential missing Whitewater file?

21 A Not that I remember. But I would have
22 to -- this would be one instance where I would have

1 to sit down with Carver and go over what we were
2 doing that the point.

3 Q Did you discuss Nussbaum's inventory of the
4 papers on the day that Vince Foster's office was
5 searched?

6 A Joe has it down here. "Nuss inventory if
7 there is one." But I think the discussion was
8 limited to, if there is an inventory, it might help
9 us find out if there is a file.

10 Q Did you discuss anything else with respect
11 to those files?

12 A Well, I know I went to see Shaheen, and we
13 must have discussed it. In fact it says, number 5,
14 undecipherable word, "with Shaheen" -- oh, "discussed
15 with Shaheen," I guess it is and I went to see
16 Shaheen.

17 Q Did you also discuss the White House travel
18 office files at that point?

19 A Well, Joe's got it down here, but if we
20 did, I don't know if I was still there. In any
21 event, it wasn't of any interest to me so I didn't
22 remember.

1 (Discussion off the record.)

2 BY MR. GICALE:

3 Q Mr. McDowell, do you have any other
4 independent recollection of that meeting or what else
5 was discussed and what was decided after the meeting?

6 A No.

7 Q Do you know why the meeting was called on
8 that particular date? And we are not quite certain
9 of the date, although it may be December; is that --

10 A I am not quarreling with the date. It kind
11 of privately amuses me, normally I take off Christmas
12 and the day after and usually that whole week.
13 Probably because there were things that were going on
14 and I needed to be there.

15 Q Do you recall there were some negotiations
16 going on on or about December 24, 1993 with respect
17 to the subpoena to David Kendall?

18 A Yes, I don't know -- it's the precision of
19 my recollection that I would quarrel with, that it is
20 that date, but I remember at the time there were a
21 lot of things going on.

22 Q Around Christmastime, as a reference point?

1 A I am not denying that's the date. I am
2 just saying that I remember about that time late
3 December, there were a lot of things going on that
4 seemed to be very important. Whether or not in the
5 long run, they would have been or not --

6 Q Do you remember when the subpoena went out
7 to David Kendall, or the request went out?

8 A I think it was around that time.

9 Q Before Christmas; correct?

10 A You see, that's the thing, before or after
11 Christmas, I don't remember whether it was before or
12 after Christmas; whenever it was, it was, but I
13 remember it was in December.

14 Q Do you know whether this meeting occurred
15 before or after that subpoena?

16 A No.

17 Q Do you know if this meeting was in
18 relationship, was related in any way to the subpoena
19 and the records you would be obtaining from
20 Mr. Kendall?

21 A I think Joanne Harris would have wanted a
22 summary of everything we were working on. I think

1 she was probably well aware of it but she wanted --
2 that would be a normal thing to do, here is what we
3 are doing right now. And if we are in fact -- that
4 was when we were subpoenaing Kendall, I would have
5 told her.

6 Q Mr. Mackay testified yesterday there was
7 some concern in terms of Mr. Kendall's delivery of
8 documents to the department, concern based on some
9 inconsistencies in terms of conversation with
10 somebody, either Mr. Carver or Mr. McDowell, had with
11 Mr. Kendall about the production of documents.

12 MR. BEN-VENISTE: Are you sure you want to
13 tell this witness what Mr. Mackay testified to? That
14 might be somehow --

15 MR. GICALE: Yes, I am sure of that.

16 MR. BEN-VENISTE: Did you check your
17 ethical capacity?

18 BY MR. GICALE:

19 Q Mr. Mackay testified to that yesterday, and
20 indicated that there was a concern about that --

21 A If we can get done within five minutes,
22 let's not count this joke time against me.

1 MR. GICALE: Off the record.

2 (Discussion off the record.)

3 THE WITNESS: Whenever you are asking a
4 lawyer for documents, there are always concerns and
5 worries, and yes, there were. How big they were in
6 the scheme of things, I don't --

7 BY MR. GICALE:

8 Q Was this meeting called to address those
9 concerns or anticipation of that production of
10 documents?

11 A The only memory I have of the meeting was
12 that afterwards I went to see Shaheen. And it seemed
13 like, at the time, a diversion but probably a
14 necessary diversion, because the pleas raised an area
15 that didn't seem at all central to our investigation,
16 but if we didn't cover it in some sense, we would
17 probably be accused of being incomplete.

18 On the other hand, it was interesting, you
19 know, I had nothing to do with the inquiry into
20 Foster, and I didn't mind going to see Mike Shaheen
21 and talking to him about it, but it did seem to be a
22 diversion. I don't think anything ever came of it.

1 Q Earlier you were asked by Mr. Ben-Veniste
2 whether or not political considerations should
3 determine the process of a criminal investigation; is
4 that correct?

5 A Right.

6 Q And you responded that political
7 considerations should not determine the process;
8 correct?

9 A And I took that to mean Democrat,
10 Republican and partisan.

11 Q Any political --

12 A "Any political" is too broad. Obviously if
13 I sat around on my rear end and didn't do anything,
14 politically the department would be hurt for having a
15 bunch of boobs running the investigation. If it is
16 so broad to include that, there was an expectation
17 that we not be dilatory.

18 Q So it shouldn't be influenced, for
19 instance, by elections; correct?

20 A Right, and there was -- that part --

21 Q Do you know whether or not the department
22 was influenced by any political considerations in its

1 decisionmaking with respect to the investigation of
2 the -- the criminal referral of the Hale case?

3 A When it first came up, and this was before
4 I got involved in it, I think the U.S. Attorney was
5 concerned that the referral was a politicalization of
6 the process. And I think in retrospect he was
7 probably right, but I don't have any proof of that,
8 but that's what it seems like.

9 Q Did he make any decisions based on the
10 political process?

11 A Well, I think he decided not to
12 investigate -- I mean if you take his writings at his
13 word, I am talking about Banks now.

14 Q Right.

15 A If you just look at the letters, that
16 looked like he -- I had that in mind. His
17 independent evaluation of the referral plus his
18 suspicions of the timing of it made him not do
19 anything to avoid politicizing the case.

20 Q Didn't he make a decision not to
21 investigate this prior to November 3, 1992, the date
22 of the election?

1 A Well, he looked at the documents and
2 everything; to that extent he did something. I think
3 what he didn't want to do is do anything that would
4 be overt to the public and cause comment because he
5 thought it would politicize an otherwise barely
6 routine referral.

7 Q I am going to refer you to document number
8 7051, probably some zeros before that, in the last
9 paragraph of that document. It is a document to Don
10 Pettus from Charles Banks, and in the last paragraph
11 of that letter, it says "neither I personally nor
12 this office will participate in any phase of such an
13 investigation regarding the above referral prior to
14 November 3, 1992," and that's with respect to RTC
15 referral C004. Do you see that sentence?

16 A Right.

17 Q Now, Mr. Banks was -- there were political
18 considerations, political -- excuse me, strike that.

19 Political considerations were determining
20 the investigative process based on this letter;
21 correct?

22 A But I -- yes, and I think this would be a

1 good example of the broad political thing. I didn't
2 understand Mr. Ben-Veniste's question to mean
3 political in that sense but partisan; I thought he
4 was referring to partisan political like we do this
5 because it will help the White House or do this
6 because it will hurt this candidate.

7 Q So you think it is okay --

8 MR. BEN-VENISTE: Hang on. Let him finish
9 his answer.

10 THE WITNESS: I think -- and this is
11 something I am more than familiar with, because it
12 came up regularly when I was chief of the public
13 integrity section, especially in things like
14 undercover investigations and stuff, that oftentimes
15 investigations that had a political ramification
16 would be ready in some sense to surface at the time
17 of an election.

18 And there were two schools of thought on
19 how you handle it, how a prosecutor should handle
20 it. Some prosecutors -- and I was among them, and
21 Banks apparently was among them if you take his
22 letter at face value -- thought that to the extent

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1 possible you should not couple significant events in
2 a criminal investigation around an election because
3 it politicized the criminal process.

4 There were other prosecutors of some
5 repute -- in fact I can think of one that's in
6 Congress right now -- who thought that there was a
7 duty, if you could surface something, there was a
8 duty to do it around election time, simply because
9 the public had a right to know. I didn't agree with
10 that, but I could understand that you could be a
11 responsible prosecutor and think that way.

12 My own counsel, as chief of public
13 integrity, when I give talks is not to do that, to
14 avoid surfacing things public around an election,
15 because the consequences are way out of proportion to
16 whatever you would get from it.

17 So I think he acted responsibly but not in
18 a partisan way, because he is a Republican and his
19 partisan advantage would have been to surface it.
20 But I thought he acted very responsibly by not doing
21 anything until after the election, so that the
22 process wouldn't be politicized.

1 Q So you think it is fine to delay an
2 investigation because there is an upcoming election?

3 MR. SGRO: That's really an unfair
4 characterization of his testimony.

5 MR. BEN-VENISTE: You are arguing now.

6 THE WITNESS: Wait a minute. Wait a
7 minute. It is not accurate. What I said, it is not
8 a question of fairness or unfairness. That is not
9 what I said.

10 He didn't refuse to do anything. What he
11 didn't do was do something that would surface the
12 referral overtly, like issue grand jury subpoenas or
13 go out and do interviews that would generate press
14 coverage, which would necessarily be incomplete at
15 the initial stages of an investigation, so you would
16 have nothing but speculation, and unnecessarily
17 politicize the investigation.

18 It is pretty clear from either this letter
19 or other letters that he did do a substantial
20 amount -- I think he said in one of these letters he
21 and the agent and the assistant spent a week going
22 over the evidence and formed an opinion which is more

1 than most actual U.S. attorneys would do in a case.

2 Q What did he do after the election?

3 A I think he eventually tried to get out of
4 the case by recusing, but I don't think that had --
5 that was any more political than before. I think he
6 had probably -- although I haven't spoken to him on
7 this -- he had formed an opinion that this was way
8 premature, or basically, not a very good referral.

9 Q But the bottom line here is he made a
10 decision based on politics to delay the
11 investigation?

12 MR. BEN-VENISTE: No. He made a decision
13 based on fairness, as to what he would do in this
14 case, and you don't want to hear that.

15 MR. GICALE: I am asking the witness a
16 question.

17 THE WITNESS: What do you mean by
18 "politics"?

19 BY MR. GICALE:

20 Q This election, he made a decision not to
21 proceed with the investigation, because there was an
22 upcoming election on November 3, 1992; correct?

1 A Right. But I don't think it was a
2 political decision; I think it was a policy decision
3 that I agree with.

4 Q It is related to an election, and that's
5 politics.

6 A If there had been a riot at the local
7 federal prison, if there is one, he might make a
8 decision because he prioritized the riot as a more
9 important matter to deal with. Or if his wife had
10 cancer surgery, he might not do it because he opted
11 to pay more attention to his family than the case.

12 This is not something that a statute of
13 limitation was going to run before November 3. I
14 think he made a very appropriate decision that
15 involved politics but was not a political decision.
16 It was a policy decision.

17 Q With respect to Mark MacDougall's
18 memorandum of law --

19 MR. BEN-VENISTE: That's it. Let's --

20 MR. GICALE: All right, we will come back.

21 MR. BEN-VENISTE: Off the record.

22 (Discussion off the record.)

1 (Whereupon, at 12:45 p.m., the deposition
2 was recessed, to be reconvened at 1:45 p.m. this same
3 day.)
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AFTERNOON SESSION (2:10 p.m.)

Whereupon,

GERALD MC DOWELL

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Continued)

BY MR. GICALE:

Q Mr. McDowell, just going briefly back to the issue of Paula Casey's recusal, do you recall anybody telling you in September of 1993 that she had indicated that she was going to recuse herself, but she was waiting for an appropriate time to do so?

A I don't have any recollection of that.

Q Do you recall anybody in September telling her that she should recuse herself, September of 1993?

A I'm sure if we talked about it, that was the only opinion anyone had, that she should recuse herself, but focusing on a specific memo, no.

Q Your first meeting with her, your first discussion with her about it was not until November 3, 1993?

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A I can't say I never talked to her on the phone because I don't remember. The only time I ever met her was in that meeting in Phil Heymann's office.

Q So, do you have any recollection today as to why there may have been a delay, if there was, in her recusing herself?

A Speculating that she just didn't see herself, what everyone else saw, that it was appropriate for her to recuse.

Q Turning your attention to the Mark MacDougall memorandum -- and this is the document marked as 007041, dated February 23, 1993 -- how thoroughly did you review this memorandum?

A I read it. I mean --

Q How much time did you spend reading it?

A However long it takes to read it. I probably spent -- read it over a couple of times, maybe an hour.

Q Now, were you out of town when this memo was produced, at some kind of a conference with Mr. Carver and Mr. Arterberry?

1 A I don't know. My travel records would
2 show. I don't remember being out of town.

3 Q Were you involved in giving instructions to
4 Mr. MacDougall as to how long he had -- how much time
5 he had to prepare the memorandum?

6 A I don't remember talking to him about it,
7 although the MacDougall memo starts out by saying
8 whatever it says, you've asked me to -- I don't --

9 Q How many days was he given?

10 A I don't -- I don't remember. Looks like,
11 from the question I got in the House, looks like he
12 turned it around right away. That was the first time
13 I focused on that.

14 Q Within one day?

15 A That's what they said in the House.

16 Q Do you know why he was given such a short
17 time frame to turn this around?

18 A No, because I don't have any memory of the
19 length of time he had.

20 Q Now, when you said you -- the review you
21 gave it, you read it, took you about an hour;
22 correct?

1 A No, I mean -- I would say about an hour of
2 review. It didn't take me an hour to read it because
3 it is not that long a memo but I probably went over
4 it a couple of times.

5 Q What did your review consist of, other than
6 reading it?

7 A Reading it again, just to make sure I
8 grasped it.

9 Q Did you look at the criminal referral and
10 compare it to -- read that as well, and compare it to
11 the memorandum?

12 A I am guessing that I read it, I read
13 whatever papers were associated with it, as well as
14 Mark's memo, probably reread the memo. But I don't
15 have a vivid memory of sitting down and doing
16 something in a certain order --

17 Q Do you have any --

18 A -- to see, to match the response to the
19 incoming, I would have read the incoming as well as
20 his memo.

21 Q By "the incoming," you are talking about
22 the request for Mr. Keeney to take a look at it?

1 A Whatever it was, yes.

2 Q Did you look at any case law before or
3 subsequent to reading this memorandum?

4 A No.

5 Q Were you familiar with the case law in
6 this?

7 A I had a general familiarity from reading
8 press memos and reading the manuals and going to
9 conferences.

10 Q How many other referrals from the RTC had
11 you reviewed prior to this one?

12 A That, I believe, was the first referral,
13 actual referral I had seen.

14 Q So, you reviewed this, it took you
15 approximately an hour, and did you have any
16 discussions with anybody about it?

17 A I'm sure I did, but I don't have any
18 recollection of them. I would think I would talk
19 with Carver and probably Mark MacDougall.

20 Q Did you review the exhibits?

21 A Which exhibits?

22 Q The 300 exhibits?

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1 A No, I don't think there were 300 exhibits
2 attached. I think it was just the referral.

3 Q Did you request to review the exhibits?

4 A No. And I think if they were available, I
5 would not have reviewed the exhibits.

6 Q Did you discuss it with -- this memorandum
7 with the FBI or the U.S. Attorney's Office?

8 A No.

9 Q Did you feel that the memorandum should be
10 discussed with the U.S. Attorney's Office or the FBI
11 office out in Little Rock?

12 A Well, if I felt that, I would have called
13 them up, but no, I didn't feel it should be discussed
14 with them.

15 Q Now, was there any evidence of a federal
16 crime in this referral?

17 A I think that there was -- you could say
18 that some of the activities, if there were evidence
19 of it, might have been misapplication by MacDougall,
20 but it was hard to say, to get that from the referral
21 itself, because the facts weren't very well fleshed
22 out.

1 Q Okay. Is it fair to say that some
2 potential federal crimes were raised in the memo but
3 you needed further information to appear if there was
4 sufficient information to go forward?

5 A It didn't appear to me, after reading the
6 referral and especially after reading Mark's memo,
7 based on his expertise, that it was a referral that
8 had much potential.

9 Q Well, I am going refer to a copy of the
10 referral, Bates number 006695. And in particular --
11 I'm sorry, this document starts at 006695 and it goes
12 through 006714. And I am going to direct your
13 attention to one of the pages in the middle, although
14 that Bates number happens to be cut off, but it is
15 page 10 of the referral itself. There is a fax page
16 up there, number 12. And I am just --

17 MR. BEN-VENISTE: I don't think I have that
18 with me. That's all right, go ahead.

19 MR. GICALE: You want to take a look?

20 MR. BEN-VENISTE: Go ahead.

21 BY MR. GICALE:

22 Q I am going refer you to the item dated

1 2/19/85 at the top of that page.

2 A Right.

3 Q Okay. Now, what is that a description of?

4 A Why don't I just read it. "Check number
5 611 for \$95,562.62 was issued to Madison Guaranty
6 Savings & Loan for principal and interest payments on
7 five McDougal-related loans this check cleared from
8 loan proceeds of \$351,502.80, deposited to McDougal's
9 account on 2/2/85. Proceeds were designated purchase
10 and renovation of home for the McDougals; however,
11 over \$100,000 of the proceeds were ultimately
12 diverted for the purpose of bringing other debts
13 "current."

14 Q Are you saying that that type of allegation
15 is not something that should have been further
16 pursued or investigated?

17 A If the RTC wanted to flesh it out, maybe
18 see if there was any civil violation that was within
19 their jurisdiction, fine, but it didn't seem to me
20 that that, in and of itself, in this context, cried
21 out for an investigation.

22 Q Well, when an individual or individuals

1 apply for a loan, based -- make certain
2 representations to the bank, with respect to the use
3 of proceeds of the loan, and then they get it for
4 other uses, does it -- can that constitute a federal
5 crime?

6 A If they didn't pay back the loan, and they
7 never replaced the money that they diverted with
8 other funds that they had, and they never built a
9 house and the whole thing was clearly a sham, it
10 could be prosecutable as a federal crime and often
11 is. Whether or not all those things happened, it
12 isn't clear from the referral. And moreover, this is
13 someone who had already been prosecuted and
14 acquitted.

15 And in terms of the U.S. Attorney gearing
16 up an investigation on these facts, when they had all
17 this other unaddressed work in the district that they
18 referred to, it didn't seem that it cried out for
19 special treatment.

20 Q But now you are talking about a question of
21 priorities, and I understand that.

22 But, this is a pretty fairly typical kind

1 of allegation, a bank fraud case, somebody takes loan
2 proceeds and uses it for another purpose; correct?

3 A If it's done with intent to defraud the
4 bank, and the bank suffers some loss, then it is
5 often prosecuted.

6 Q As a professional prosecutor, how would you
7 proceed to investigate an allegation like this? What
8 would you do? What would be the next step you would
9 take?

10 A For one thing, you would see if the
11 institution suffered any loss, were the loans ever
12 repaid, because if it is an old loss -- if it is a
13 no-loss case, if you had all the intent to defraud in
14 the world, it wouldn't result in much a prosecution.
15 The jury would likely acquit.

16 Q Did you ask the question whether there was
17 a loss in this case?

18 A No, I didn't. There was no loss indicated
19 in the referral, which -- I think Mark noticed that.
20 And it seemed that this referral had come in
21 half-baked. There was no reason for a more thorough
22 investigation not to have been done, or there was no

1 reason to go after someone that the government had
2 already brought a presumably strong case against and
3 lost.

4 Q Well, are you saying that the government
5 doesn't go after someone where they have lost the
6 case, even though there is a viable other federal
7 charge subsequent --

8 A I don't know that they go butting their
9 heads against a wall. If you lose a case once
10 against someone, I don't think it is prudent to go
11 after them again unless you have a strong case that
12 you think you are going to win.

13 Q You are saying here, even if you had
14 discovered, with a little bit of effort, that the
15 loan wasn't repaid, and the moneys in fact were
16 diverted to some other purpose other than the
17 intended purpose of the bank, that you wouldn't have
18 pursued it?

19 A Well, we certainly didn't pursue it.

20 Q Well, you didn't look into it?

21 A No, but I don't know that -- I asked Mark
22 to look into it. What I wanted was some sense of

1 what the case was about, which he provided me. We
2 weren't taking the -- the whole point of not taking
3 the recusal was we were not going to do the
4 investigation in Washington.

5 Q Now --

6 A And that was a much easier decision that
7 didn't require a memo from a line attorney, but just
8 so I would have some sense of what the case was about
9 for my own information, and in case anybody else
10 wanted to know, it was useful to me to have Mark do
11 an analysis. It is not a press memo or declination
12 but given his experience and the experience of the
13 section, I could get a pretty good flavor of whatever
14 the case was about.

15 Q You didn't view this as a final decision on
16 the case, I take it?

17 A No, nor do I think that we ever pretended
18 it was a final decision in the case.

19 Q Where do you believe that the final
20 decision would reside with respect to whether or not
21 this ultimately would be either investigated or
22 prosecuted?

1 A If our recommendation was taken, and
2 apparently it was, it was the U.S. Attorney's
3 responsibility to either decline it, as they seemed
4 ready to do, or to change their minds and pursue it,
5 and set it for prosecution.

6 Q Were you aware of the fact that the U.S.
7 Attorney, Mr. Banks, had suggested that perhaps a 302
8 should be taken for witnesses before an ultimate
9 decision would be made as to whether or not to
10 further investigation or charge someone?

11 A I think in one of the letters that he wrote
12 that's reflected, that he thought that -- although he
13 clearly didn't think much of the case, he didn't have
14 a problem with doing some very basic interviews,
15 although frankly interviewing the subjects of the
16 case is not always a particularly productive thing to
17 do. You assume they are either going to take the
18 Fifth or tell you they didn't do anything wrong but
19 you might learn something from them.

20 Q Okay. And do you know whether they were
21 taken?

22 A No, I don't know.

1 Q So, the decision that Mr. MacDougall came
2 to in this memo and the one you reviewed and
3 concurred in -- strike that.

4 A I don't think he came to a decision. I
5 think he was telling me what he thought of the case,
6 just so I could have some understanding of what it
7 was about. The referral is kind of a stylized
8 document that's not the easiest thing in the world to
9 grasp. For one thing, I don't know where they got
10 the type for it, but it seems to be the world's
11 smallest typeface.

12 Q Okay.

13 A It was of great help to me to have Mark,
14 who is used to looking at things like this, give me a
15 read on what the case was about.

16 Q You are not saying here today that, within
17 this document, this criminal referral C0004, there
18 was no basis for some possible further investigation
19 into some criminal charges, are you?

20 A I haven't said that.

21 Q Okay. But what you are saying is that,
22 based on the proof you had before you and based on

1 some priorities you had, you didn't -- there was some
2 question as to whether or not the government should
3 proceed?

4 A Yes, looked like a junky case that, if it
5 had any merit, the RTC should have fleshed it out, or
6 it didn't have any merit and they should go on to
7 more productive things.

8 Q Did you ask them to flush it out further?

9 A No, because it wasn't our case. We were
10 looking -- strictly speaking, we were asked to give
11 an opinion on the recusal.

12 Q Did you give one?

13 A Yes, we didn't think the recusal was
14 warranted.

15 Q Was that --

16 A I didn't ask Mark to give an opinion,
17 because I don't need him for that. I needed him
18 because he had some experience in bank fraud and
19 could tell me what the case was about.

20 Q Now, is there a memo with respect to the
21 recusal opinion that you gave to Mr. Keeney?

22 A I think the only memo is the memo Larry

1 Urgenson signed off on, to who I have forgotten. The
2 deputy I guess.

3 Q The memo that exists is not from you; it
4 was drawn for Mr. Keeney to send to Mr. Frazier?

5 A Well, it was from the fraud section. I
6 initialed off on it. But it wasn't -- it wasn't
7 styled McDowell to someone, it was styled Keeney
8 to -- I have forgotten who it was, it was Frazier or
9 whoever we were sending it to.

10 Q In sum then, while there may have been
11 evidence of some crimes in this, you did not believe
12 that, based on the information you had with respect
13 to priorities and things of that sort --

14 A And it seemed like the U.S. Attorney's
15 initial opinion was correct, that it wasn't much of a
16 case, that he wasn't going to -- that he had reviewed
17 it, he had read the exhibits, we reviewed the
18 referral. Mark clearly didn't think much of the
19 referral, and he was experienced. Carver had seen a
20 lot of those types of cases. Nobody was saying this
21 was a good case, and it seemed like the U.S.
22 Attorney's initial reaction was right, that it wasn't

1 the kind of case that cried out for an
2 investigation.

3 But our opinion was also, the U.S. Attorney
4 shouldn't recuse, and what followed from that was any
5 declination of prosecution should come from their
6 office, not fraud. Because if we had had to make
7 prosecutive decision, we would have had to review all
8 the evidence, and maybe done interviews, done what it
9 takes, but I wouldn't have been happy taking the case
10 in either because it certainly didn't look like it
11 had any potential.

12 Q But you wouldn't know that until you look
13 at the exhibits?

14 A You don't know anything, you can look at a
15 case that looks absolutely horrible and find out in
16 the first interview you get. But if you take that
17 approach to life, you never prioritize anything; you
18 don't get anywhere.

19 Q You have to take some other steps to
20 determine whether or not you have to go further?

21 A One of them is experience, that accounts
22 for a great deal, and here, it didn't look to me like

1 it was a great case, didn't look to Mark like it was
2 a great case, United States Attorney who was familiar
3 with McDougal and the evidence didn't think it was
4 much of a case, the FBI didn't think it was a great
5 case. And when you add that they had huge failures
6 that no one was looking at, it seemed like an
7 enormous waste of time.

8 Q So, \$100,000 of proceeds, if there is an
9 allegation it was diverted, you don't think that's a
10 significant case, diverted from a loan?

11 A What is diverted? I mean I just went
12 through that with you. If the investigators, who
13 apparently had the time to look into this, had found
14 that it was a deliberate fraud, the bank wouldn't
15 have loaned the money or the S&L wouldn't have loaned
16 the money without the representation it was to go for
17 a house and in fact it didn't go for a house. And
18 the money -- tracing the money, they diverted
19 100,000, that wasn't replaced by anybody else and it
20 wasn't repaid -- and all of these things go to making
21 it an attractive case to prosecutors -- just the bare
22 fact that there is an allegation of a diversion,

1 isn't enough because all of these referrals have some
2 kind of allegation.

3 There are thousands of referrals that come
4 in, and the reason they refer it is the investigator
5 from the RTC thinks there is a potential of a
6 criminal case. But the hard work is to wade through
7 the referrals and see which ones have good potential
8 and discard whichever ones don't, and return those to
9 the RTC for whatever civil remedies they think are
10 appropriate.

11 MR. BEN-VENISTE: Off the record.

12 (Discussion off the record.)

13 BY MR. GICALE:

14 Q Mr. McDowell, it is the expectation of the
15 U.S. Attorney's Office and the Department of Justice
16 that, when these referrals come in, for instance,
17 from the RTC, that usually some additional work has
18 to be done; correct?

19 A By somebody, yes, not necessarily in the
20 criminal context.

21 Q Well, criminal or civil, but that sometimes
22 that has to be done -- grand jury subpoenas, for

1 instance, are issued; correct?

2 A No, I would say not in every case. The
3 10,000 cases that were in inventory had large losses
4 alleged, but there are thousands of other cases that
5 don't get any work. And of those 10,000, lots will
6 be declined without any grand jury, by going through
7 a process not too dissimilar to what the U.S.
8 Attorney did here and what we are talking about.

9 Q The process you are talking about is the
10 prioritization process?

11 A Which tells you if you are going to put an
12 ounce more of work into it.

13 Q So what we are saying here to do is there
14 may be cases where there may be evidence, there is
15 the potential for evidence, but you might decline
16 simply because of a prior prosecution --

17 A I would think, to give the RTC their due,
18 everything that gets referred has some potential;
19 otherwise it would be outrageous to send it over, and
20 I don't think they acted outrageously across the
21 board.

22 But, given also that they were referring

1 cases at a relatively low level of criminal
2 potential, most of the cases that they referred, just
3 statistically, probably didn't belong being reviewed
4 by the FBI or the U.S. Attorney. If it was another
5 category of crime, the U.S. Attorney probably would
6 have stepped in and said stop sending this junk to
7 me. But because the country was really, you know,
8 endangered by the S&L crisis, the Justice Department
9 went to special lengths during this period of time to
10 carefully review one class of cases, namely savings
11 and loan defaults in the RTC, to make sure we went
12 the extra mile.

13 And we looked at a lot of cases that
14 ordinarily a U.S. Attorney or FBI office wouldn't
15 look at. But going the extra mile to look at them
16 doesn't mean you go the extra mile to interview or
17 extra mile to grand jury, that would have been an
18 incredible waste of time and effort that would have
19 impeded real work being done.

20 Q How much time and effort would it take to
21 proceed on this?

22 A The United States Attorney, Mr. Banks,

1 mentions in one of his letters that he spent about a
2 week reviewing the referral and the evidence. And
3 the FBI had reviewed it and had fairly negative
4 conclusions. And when we looked at the referral
5 itself, there was nothing about it that cried out
6 there is something special here.

7 It seemed like their opinions were correct,
8 and we weren't saying that, when we sent it back to
9 them, that they couldn't take that particular
10 allegation that I just read, and go out and do an
11 interview or look at the checks. But it -- we also
12 were saying it wouldn't be unprofessional if they
13 didn't do it, if they just declined it.

14 Q But the U.S. Attorney didn't say he
15 reviewed the exhibits and said there was no case. He
16 said -- and you are referring to the letter that he
17 sent to Mr. Pettus, the FBI agent; correct?

18 A I am referring to all the documents that
19 came with the package.

20 Q Right. Once he had reviewed those
21 documents, he said that he would discuss the
22 possibility of proceeding further, but that at that

1 juncture there was no evidence to suggest that the
2 witnesses had any culpability or knowledge; isn't
3 that your understanding of it?

4 A That's part of my understanding. I also
5 think he thought it was a politically motivated
6 referral. I think he thought there was no
7 potential. I may be extrapolating some of what the
8 SAC said. But you have a lead defendant that lives
9 in a trailer down by the river, almost like that joke
10 on Saturday Night Live, what are we talking about
11 here, you've got criminals in the big banks in
12 Arkansas, with \$900 million failure and \$600 million
13 failure, and we are zeroing in on someone who has
14 been acquitted, has no assets and a very marginal
15 referral comes along, that's not the time that a good
16 U.S. Attorney jumps and says ring the sirens, let's
17 go follow up every lead.

18 Now, if nothing had happened, if he hadn't
19 sent it to Washington within a year, the RTC referred
20 other matters that had much more potential and the
21 U.S. Attorney's Office did something about it. I
22 mean that's the way the world works.

1 But to go off, you know, like a firehouse
2 dog just because you get that referral in would have
3 been imprudent. I think Banks did the right thing.
4 His only mistake I think was sending it to Washington
5 because of a recusal because he didn't allege any
6 grounds to justify the recusal.

7 Q Banks never made a decision on whether to
8 prosecute this matter?

9 A Right. So?

10 Q Well, when you say "did the right thing,"
11 what did he do --

12 A He did the right thing by telling the FBI
13 that he wasn't going to give them a prosecuting
14 opinion and signaling to them that he thought it had
15 very little potential. And I think he did the right
16 thing not to do anything right prior to the election
17 to politicize it, and the fact that afterwards he
18 thought he should recuse, I think he was wrong there
19 but that's not a terrible thing. He sent it in and
20 got the answer back that he should have gotten.

21 Q He said that he would not give them a
22 prosecutive opinion?

1 A Yes, I think he said that flat out in one
2 of his letters to the SAC.

3 Q Didn't he say in due time he would be happy
4 to meet with them and discuss the possibility of
5 these allegations against the McDougals? And I am
6 going to show you --

7 A Are you saying he didn't say to the FBI
8 that he wouldn't --

9 Q I am going to show you his letter, document
10 FBI 7051 and 7052, dated October 16, 1992. Do you
11 want to review it?

12 A "At the time we met, I explained to you my
13 serious reservations about future prosecutions of the
14 individuals involved in this referral. My evaluation
15 of the referral indicates that there is not a
16 prosecutable case capable of being proved beyond a
17 reasonable doubt against any of the witnesses."

18 What --

19 Q Just --

20 MR. BEN-VENISTE: Let him answer the
21 question. We have been over this thing 17 times.

22 MR. GICALE: I have gotten different

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1 answers.

2 MR. BEN-VENISTE: I don't think so.

3 MR. SGRO: I think it is the same answer.

4 BY MR. GICALE:

5 Q Can you tell us where he said that he would
6 not submit a prosecutive memo or whatever -- I'm
7 sorry, what was it, that prosecutive -- how did he
8 characterize that?

9 (The reporter read the record as requested.)

10 BY MR. GICALE:

11 Q Where does it say that in the letter?

12 A I think -- well, let me see, Pettus's
13 material, I think that -- I know I have read
14 someplace that he wouldn't participate in the
15 investigation if the FBI were audited.

16 MR. BEN-VENISTE: It is in the fifth
17 paragraph down, Gerry. Fourth paragraph.

18 THE WITNESS: "However, I do believe it
19 might be helpful to reiterate what I told you
20 previously."

21 MR. BEN-VENISTE: Above that.

22 THE WITNESS: "I am now advised that you

1 have been ordered to do an immediate review to
2 determine if an investigation is warranted. As part
3 of the same, you are required to send a prosecutive
4 proposal for such investigation by Friday October 16,
5 1992. Such an order does not apply to this office.
6 However, I do believe it might be helpful to
7 reiterate what I have told you previously. Neither I
8 personally nor this office will participate in any
9 phase of such an investigation regarding the above
10 referral prior to November 3, 1992. You may
11 communicate this orally to officials of the FBI. You
12 should feel free to make this part of your report."

13 Prior to that, he says, "the only
14 allegations having any credibility were the possible
15 deliberation for investigation existing against Mr.
16 and Mrs. McDougal and Lisa Anspaugh. These
17 allegations combined with Mr. McDougal's previous
18 acquittal, his present mental state along with no
19 prospect of recovering lost moneys from the
20 institution have serious negative attributes for a
21 successful prosecution of these insiders."

22 Q Where in the letter does it say that he

1 would not supply them with a prosecutive opinion?

2 MR. BEN-VENISTE: He just said he is not
3 participating in this. Come on.

4 MR. GICALE: It doesn't say that.

5 MR. BEN-VENISTE: We are spending hours on
6 this. It is argument.

7 MR. GICALE: It is not in the letter.

8 MR. BEN-VENISTE: He has given the answer.
9 You may not be familiar with the way --

10 MR. GICALE: He had a chance to review it.

11 BY MR. GICALE:

12 Q Is it in the letter?

13 A The exact words are not but the parts of
14 the letter I just read are a clear message to the FBI
15 that he didn't think this case has any prosecutive
16 merit, and I think -- and the SAC's teletype to
17 Washington that's reflected.

18 Q Well, then why would he be saying I would
19 be happy to meet with you to discuss a limited
20 examination and possibility of proving some of the
21 allegations regarding Mr. and Mrs. McDougal and
22 Ms. Anspaugh?

1 A It is undoubtedly a courtesy to the SAC,
2 who has been told apparently, judging from that
3 letter, if that letter is accurate, has been told to
4 do something. He is not telling the SAC as a bad
5 person but he is giving them a pretty
6 straight-from-the-shoulder opinion.

7 Q So despite the fact that there may have
8 been some evidence of criminal activity in this
9 criminal referral, you do not feel --

10 MR. BEN-VENISTE: I object to the
11 redundancy of asking these questions. Sometimes --

12 MR. GICALE: Strike that. I am done.

13 EXAMINATION

14 BY MR. BEN-VENISTE:

15 Q Let me conclude this by turning your
16 attention to the second page of the document that you
17 have just alluded to, which is Mr. Banks's letter to
18 Mr. Pettus of October 16, 1992. And read into the
19 record the first two paragraphs on the top of that
20 page -- I'll do it.

21 A Okay.

22 Q You have been called upon to read plenty.

1 "While I do not intend to denigrate the
2 work of RTC, I must opine that after such a lapse of
3 time, the insistence for urgency in this case appears
4 to suggest an intentional or unintentional attempt to
5 intervene into the political process of the upcoming
6 Presidential election. You and I know in
7 investigations of this type, the first steps, such as
8 issuance of a grand jury subpoena for records, will
9 lead to immediate and public inquiries of matters
10 that are subject to absolute privacy. Even media
11 questions about such an investigation, in today's
12 modern political climate, all too often publicly
13 purports to 'legitimize what can't be proven.' For
14 me personally to participate in an investigation that
15 I know will or could easily lead to the above
16 scenario and to the possible denial of rights due to
17 the targets, subjects, witnesses or defendants, is
18 inappropriate. I believe it amounts to prosecutorial
19 misconduct and violates the most basic fundamental
20 rule of Department of Justice policy. I cannot be a
21 party to such actions and believe that such would be
22 detrimental to the Department of Justice, the FBI,

1 this office, and to the President of the United
2 States," who was then George Bush; correct?

3 A Yes, that's right.

4 Q Now, Mr. Banks was an appointee of a
5 Republican president; correct?

6 A As far as I know, that's correct.

7 Q In all of your time in the public integrity
8 section and other parts of the Department of Justice
9 and utilizing that experience, in your judgment, do
10 you find any fault whatsoever with the analysis that
11 Mr. Banks was making in the two paragraphs that I
12 have just read?

13 A No, I think in the context of what he had
14 in front of him, that was an appropriate way to go.

15 Q And in the sense of what Mr. Banks was
16 saying in terms of a recusal, is it fair to say that
17 he didn't want to be put in the position of having to
18 decide to go forward in this investigation, under
19 these circumstances, that might cause an improper
20 result in terms of publicity associated with the
21 opening, the mere opening of an investigation?

22 A I don't know if I'd link that to the

1 recusal. I think he didn't want to make a
2 prosecutive judgment and do any investigation at that
3 point, because that would be inappropriate.

4 Q When he talked about intentional or
5 unintentional attempt to intervene into the political
6 process, by some person or persons at the RTC, did
7 you know at the time this letter was written that
8 Jean Lewis, who was the author of the criminal
9 referral, told Supervisory Special Agent Irons that
10 in substance, she was changing her personal plans and
11 turning down another job so that she might change the
12 course of history?

13 A No, I didn't know that.

14 Q And did you know that Ms. Lewis took
15 herself off the investigation of banks that had
16 suffered much more substantial losses in Arkansas
17 than Madison, to work on this Madison matter?

18 A No, I wasn't aware of that at the time.

19 Q And if you had been aware of those facts,
20 would that have led to reinforcing the position that
21 Mr. Banks was taking, or diminishing from the force
22 of the position he was taking?

1 A Well, I thought he was correct, without
2 knowing it but certainly, if those were the facts, I
3 think he was 200 percent right.

4 Q Then let me turn finally to the area of the
5 SBA document, the investigation, if we can call it
6 that, when various individuals were -- from the White
7 House counsel's office were interviewed by FBI agents
8 at your direction. And I say "your," I include
9 senior people at the Department of Justice.

10 As the result of those interviews, did it
11 appear to you that anyone at the White House had
12 acted unlawfully?

13 A No. Although, frankly, I haven't -- if I
14 have ever seen the interviews, I have forgotten them
15 but it was not an issue as we were turning the case
16 over to Fiske. We didn't think we had any evidence
17 of unlawful behavior.

18 Q And did you uncover, putting aside unlawful
19 behavior, any evidence of improper motive?

20 A I don't recall any, no.

21 MR. BEN-VENISTE: I have nothing further.

22 EXAMINATION (Continued)

1 BY MR. GICALE:

2 Q Did you review any of the interviews of the
3 FBI agents?

4 A That's what I tried to tell
5 Mr. Ben-Veniste, I don't have any memory of it. If
6 we had them in the office, I would have seen them. I
7 just don't remember seeing them.

8 Q All you know is there was a plan to
9 interview them and you don't know what happened?

10 A That's my memory but I already also know
11 whatever happened, that lead petered out. It wasn't
12 what we -- basically what are we were occupied with
13 was an orderly transfer to Fiske and we briefed Fiske
14 on what we thought was current. And I don't remember
15 meeting the White House counsel's office except to
16 tell him what we had been doing vis-a-vis the counsel
17 so if he wanted to follow up on it he could.

18 Q Okay, you told him that you had been
19 talking or proposing to interview certain White
20 House --

21 A Yes, I just can't remember how much I knew
22 at the time, but we, Carver and I, told him about the

1 SBA documents and that stuff. And if he wanted to
2 follow it up, he could. But I don't think -- I don't
3 have any memory of saying, gee, we really found
4 something just as we had to give the case up. I
5 would have to look at the interviews to tell you if I
6 had seen them before.

7 MR. GICALE: I have nothing further.

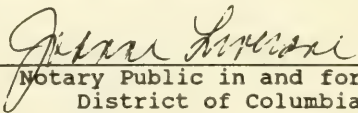
8 (Whereupon, at 2:50 p.m., the deposition
9 was concluded.)

10 -----
11
12 GERALD MC DOWELL
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

140

I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires

JULY 31, 2000

1 RPTS WHALEN

2 DCMN MAYER

3
4 COMMITTEE ON BANKING AND FINANCIAL SERVICES

5 U.S. HOUSE OF REPRESENTATIVES

6 WASHINGTON, D.C.

7
8
9 - - - - - x
10 In the matter of: :

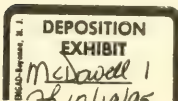
11 MADISON GUARANTY :
12 SAVINGS & LOAN :
13 - - - - - x

DEPOSITION OF
GERALD McDOWELL

14
15
16 Friday, September 15, 1995

17
18 Washington, D.C.

19
20
21 The deposition in the above matter was held in Room 714,
22 O'Neill House Office Building, commencing at 10:31 a.m.
23
24
25



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6 Appearances:
7

8 Staff Present for the Banking and Financial Services
9 Committee: Thomas Clark, Senior Counsel; and James H.
10 Clinger, Senior Counsel.

11 For the U.S. DEPARTMENT OF JUSTICE:

12 PAUL J. FISHMAN, ESQ.
13 U.S. Department of Justice
14 Office of the Deputy Attorney General
15 10th and Constitution Ave., NW.
16 Washington, D.C. 20530
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25

1 WHEREUPON,

2 GERALD McDOWELL,

3 a witness in the above-entitled matter, was called as a
4 witness, and having been first duly sworn or affirmed to tell
5 the truth, the whole truth, and nothing but the truth, was
6 examined and did testify as follows:

7 EXAMINATION BY MR. CLARK:

8 Q Good morning, Mr. McDowell.

9 A Good morning.

10 Q Thanks very much for appearing this morning. My
11 name is Tom Clark. I'm Senior Counsel to the committee on
12 Banking and Financial Services. With me is Jim Clinger who is
13 also Senior Counsel to the committee. I appreciate you being
14 here today, as I said.

15 For the record, I will note that we received a call this
16 morning that no member of the ~~Minority~~ professional staff
17 would be present at this morning's deposition. And I would
18 also note for the record that Paul Fishman of the Department
19 of Justice has accompanied the witness.

20 As you know, Mr. McDowell, the committee is investigating
21 the failure and resolution of Madison Guaranty Savings & Loan
22 Association and related matters, including the executive
23 branch's handling of Madison Guaranty. Most of my questions
24 will be related to that area.

25 I will have some questions for you, and after I'm done,

1 Mr. Fishman will have the opportunity to ask some questions if
2 he likes; and it's conceivable I may have some follow-up to
3 his questions.

4 This deposition is not governed by the Federal Rules of
5 Civil Procedure, but objections may be made for the record.
6 If an objection is made, the question will either be
7 withdrawn, recast or allowed to stand in the discretion of the
8 questioner. If there is an instruction not to answer a
9 question, and the instruction is followed, Majority staff will
10 determine if the deposition is to proceed or if a recess must
11 be called to obtain the Chairman's instructions, if any.

12 In the spirit of cooperation, however, the committee
13 hopes to avoid reaching that point, and we have been
14 successful so far.

15 A Okay.

16 Q I'll note that there are some time scheduling
17 concerns; however, this is not a marathon. If you want to
18 take a break, just say so. If you don't understand any
19 question I have, which is entirely possible, just say you
20 don't and I will try to rephrase it.

21 A Sure.

22 Q The first thing, Mr. McDowell, I will mark is GMCD
23 Exhibit 1. This is a document that the Department provided to
24 the committee, listing your tenure, various positions you've
25 held with the Department and the months and years during which

1 you held various positions. I'd just ask you to review it
2 very briefly and let us know if it's generally accurate?

3 (GMCD Exhibit No. 1 was marked for
4 identification.)

5 A The only mistake I see is, when I was in St. Louis,
6 I was the Chief of the Strike Force there, as well as later in
7 Boston.

8 Q Okay. So that would be the period between September
9 of '71 and July '73?

10 A Right.

11 However, I wasn't paid at the rate of a Strike Force
12 Chief, which is probably why they have me down there.

13 Mr. Fishman. I will note for the record that I believe
14 the information on this document was pulled from the official
15 personnel files at the Department, so to the extent that that
16 explains you're de facto Chief, but not getting paid, is
17 probably reflected in those files.

18 BY MR. CLARK:

19 Q Very briefly, can you explain what a general
20 attorney is?

21 A Well --

22 Q Does that mean you were unassigned?

23 A Well, I had assignments. Usually they describe it
24 as trial attorney, and I had some trial work during that
25 period. But it was some trial work, some bureaucratic

1 paperwork.

2 Q Okay. You aren't in a particular section -- say,
3 the Fraud Section or the Organized Crime?

4 A Yes. I was in the Organized Crime Section from the
5 very beginning.

6 Q Okay. So then really from September of '67, 1967,
7 up until June of 1980, all during that time your work was
8 associated with Organized Crime?

9 A Organized Crime. Even in the first two months I
10 before I had passed the bar, I was with the Organized Crime
11 Section.

12 Q Okay. And, again, part of that time was as a trial
13 attorney and part was as a chief.

14 Overall, can you approximate how many trials you had in
15 the Organized Crime and Racketeering Section?

16 A Probably about 10 to 15.

17 Q Did any of them involve Title III matters,
18 wiretaps?

19 A I never had a wiretap case where I put in evidence.
20 I was involved in Title IIIs, in getting them, but they
21 produced cases that other people took.

22 Q In other words, the investigatory stages?

23 A Right.

24 Q As opposed to the prosecuting?

25 A None of my trials used Title III evidence.

1 Q And then in approximately June of 1980, you moved
2 over to the Public Integrity Section?

3 A Right.

4 Q And while you were in the Public Integrity Section,
5 did you have any trials in that section?

6 A No. No.

7 Q And then in approximately March '92 through November
8 1994, when you were the Chief of the Fraud Section, did you
9 have any trials during that period of time?

10 A No. Both of those jobs were entirely supervisory.

11 Q Now, your current position is with the Asset
12 Forfeiture office?

13 A Right.

14 Q How did it come about that you moved from the Fraud
15 Section to your present position?

16 A I was talking with Jo Ann Harris about career moves
17 out of the division and she suggested that she had a job that
18 she had had in mind for me to be Director of Asset Forfeiture
19 at a time when the Asset Forfeiture office was absorbing the
20 old executive office for Asset Forfeiture and the Deputy's
21 office, so I had to combine the two offices. And there was at
22 that time an expectation that the Money Laundering Section
23 would be absorbed into Asset Forfeiture, as well, so it was
24 going to be like a two-stage merger, and she wanted me to
25 oversee it.

1 Q Is the Asset Forfeiture -- okay. I see it denotes
2 as being under the Criminal Division?

3 A Right.

4 Q So it was criminal forfeiture as opposed to civil
5 forfeiture?

6 A No, they do civil forfeiture, but it's placed in the
7 Criminal Division largely because I think it's seen as a
8 criminal remedy.

9 Q This was -- I'd say from your answer, was something
10 you initiated, the move?

11 A I said yes readily, but she's the one that brought
12 it about. I didn't even know that the mergers were in the
13 offing, but when she told me about it, it seemed interesting
14 and I took her up on it.

15 Q Sure. When you were Chief of the Fraud Section,
16 approximately how many lawyers did you supervise?

17 A I think I started out with either 110 on board, or
18 at least on paper, and we had -- there was a job freeze going
19 on, so gradually, through attrition and failure to fill
20 positions, it probably was down to either in the high 90s or
21 about 100 by the time I left.

22 Q In your present position who, would you say, is the
23 person who is your immediate supervisor?

24 A Mary Lee Warren, who is a Deputy Assistant Attorney
25 General.

1 Q Just a brief diversion, I don't know that Ms. Warren
2 would remember me, but we worked for a brief period of time in
3 New York.

4 A She came down from the Southern District to be the
5 Chief of Narcotics Section a couple of years ago.

6 Q Was there ever a period of time while you worked in
7 the Department that you would consider John Keeney to be the
8 person that you reported to directly?

9 A For a number of years.

10 Q Okay. Can you give me an approximate of the
11 beginning and the ending time or times?

12 A Well, he was the Deputy Chief of the Organized Crime
13 Section in 1967. And the reporting then was somewhat ad hoc,
14 but I did report to him on some things for the two years that
15 I was in Washington with the Organized Crime Section. So that
16 would be '67 to '69. I reported ~~through a number~~ -- he wasn't
17 my direct supervisor, but I reported --

18 Q He was one of a number of people?

19 A Well, I reported through our senior lawyer. I mean
20 I didn't go walking into his office.

21 Q Sure.

22 A But he was one of two Deputy Chiefs, and they both
23 had supervision over me.

24 Q Okay.

25 A Then he didn't supervise me again until probably, I

1 guess, when I moved to Public Integrity in 1980, in June of
2 1980, until I left Public Integrity in March of '92, so one
3 long stretch and one shorter stretch. But interspersed
4 throughout all that, he has been acting Assistant Attorney
5 General a number of times, so whenever he's acting Assistant
6 Attorney General, he's a supervisor as well.

7 Q Okay. And that would have been the case between
8 January and November of 1993; is that right?

9 A Was it that long before Jo Ann Harris came in? But
10 anyway, until she got sworn in, that would have been the
11 case.

12 Q Okay. In the trials that you did have when you were
13 in the Organized Crime and Racketeering Section, did any of
14 them involve financial crimes being committed by organized
15 crime members?

16 A No. They were mostly ~~loan-sharking~~, truck
17 hijackings, one drug case, some corruption cases and bookie
18 cases, bank robbery, that kind of stuff. This was a long time
19 ago. That was the bread and butter of Federal work in those
20 days.

21 Q Is it fair to say that during your period of time
22 with the Department you've had occasion to discuss not
23 confidential but sensitive matters with Mr. Keeney?

24 A Oh, maybe thousands of times, but certainly
25 hundreds.

1 Q Okay. And have you had occasion to discuss, without
2 getting specific about it, even classified matters with him?

3 A Possibly. I don't deal -- I haven't dealt that much
4 with classified matters. I dealt with them, but not to the
5 extent I would be in confidence. I would have to say yes
6 simply because of number of things I've talked to Keeney
7 about.

8 Q Did there come a time when you learned of the
9 existence of a financial institution fraud investigation that
10 involved an Arkansas savings and loan in which the names of
11 either Bill or Hillary Clinton arose?

12 A Yes.

13 Q Okay. Do you remember when you first became aware
14 of that?

15 A The first that I remember being aware of it was when
16 I read Mark MacDougall's memo in early 1993. But since then,
17 you know, it has been such a topic of conversation, it's kind
18 of hard to place the first time. But that's the first real
19 memory I have of it.

20 Q Okay. Just in aside very briefly, when was the last
21 time that you spoke to Mr. Keeney?

22 A I spoke to him this morning.

23 Q Okay. Did he happen to discuss his testimony?

24 A No. He went out of his way not to. He said that he
25 didn't want to talk about the substance. I told him it was my

1 day in the barrel, so other than commiserating with me, he
2 didn't want to talk about it.

3 Q Okay. Have you had an opportunity to review
4 documents before you made your appearance here today?

5 A Yes.

6 Q And was one of the documents you saw an FBI Teletype
7 from October of 1992?

8 A From Arkansas up to headquarters?

9 Q Yeah.

10 A Yeah.

11 Q Well --

12 A I'm sure there were many, but that one of the
13 documents was a --

14 Q Let me just show you very quickly, Mr. McDowell, on
15 document 00712885 -- and I'm referring specifically just to
16 the Post-it, or what appears to be a photocopy of a Post-it.
17 There is some handwriting on it. Do you recognize that
18 handwriting?

19 A No.

20 Q It's not yours?

21 A No.

22 Q Okay. Showing you Bates stamped number 000500,
23 through and including 000505, the first page is a note
24 handwritten on U.S. Department of Justice stationery. At the
25 top, it appears Jerry McDowell, FYI. FYI, you understand,

1 means for your information?

2 A Right.

3 Q Does seeing the document refresh your recollection
4 of having a conversation with Mr. Keeney, or even Robert
5 Mueller, in the fall of 1992 concerning this investigation?

6 A I don't remember, but I don't remember more in the
7 sense of I don't think I ever talked to Mueller about this
8 case. But I don't have any memory of it, if I did.

9 Q Okay. Would it be usual for you to at least read
10 things that were sent to your attention?

11 A Something like this, if it came to the Fraud
12 Section, my secretary would put it in my in box and I would
13 read it.

14 Q Now, you said that really your first recollection of
15 this is in connection with Mr. MacDougall's memorandum?

16 A Right.

17 Q Do you recall the circumstances of the preparation
18 of that memorandum?

19 A Only by, you know, inferences to the way the section
20 worked. If something came in, it would be assigned usually by
21 a Deputy Chief of the section to one of the line attorneys who
22 would produce some work and it would come up to me.

23 Q Okay. So you wouldn't have been involved in the
24 assignment to Mr. MacDougall?

25 A I don't remember it. That's the first time I've

1 been asked that question, and I just don't remember making the
2 assignment; and it wouldn't have been the normal course of
3 business to make an assignment either.

4 Q Okay. You just mentioned something. I will just
5 say, we are not seeking to ask you any questions about
6 anything you may have told any grand jury.

7 A Sure.

8 Q Okay. We want to avoid that.

9 A Okay.

10 Mr. Fishman. At the same time, just to note for the
11 record, I think what Mr. McDowell is saying is that at this
12 point, having discussed the matter with the independent
13 counsel or with other people in the course of the last several
14 years, I think his point is, his memory about when he learned
15 particular things or read particular things is no longer
16 entirely clear.

17 Mr. Clark. I'm not disputing that.

18 The Witness. You just don't want me to refer to any
19 grand jury stuff.

20 Mr. Clark. Sure.

21 Mr. Fishman. Right.

22 The Witness. Okay.

23 BY MR. CLARK:

24 Q Was Mr. MacDougall a person that you knew at that
25 time?

1 A Yes. He was assigned to our Dallas Bank Fraud Task
2 Force, and my recollection is that he was in the process of
3 going up to our Boston Bank Fraud Task Force and then left to
4 join a private law firm here in the District of Columbia.
5 Which particular stage he was in at the time of the
6 assignment, I'm not sure. He was either on his way to Boston
7 or on his way out of the Department, but he was no longer in
8 Dallas.

9 Q Okay. Do you know whether he was someone who had
10 been in the Department for a substantial period of time prior
11 to February of 1993?

12 A I believe he'd been in for a couple of years, not a
13 substantial period of time, but I knew who he was. He had
14 given a lecture at a brown bag right after I became Fraud
15 Section Chief about one of his cases down in Dallas, and I
16 thought he did a good job and I knew the Deputy Chiefs for
17 Bank Fraud had a high opinion of him.

18 Q So when you saw this memorandum that Mr. MacDougall
19 produced, you expected that it would be fairly comprehensive
20 or that it would be a valuable document?

21 A Yes.

22 Mr. Fishman. I'm sorry, when you say "expected," are you
23 assuming a prior expectation on Mr. McDowell's part or are you
24 saying what his --

25 Mr. Clark. Let me rephrase it.

1 BY MR. CLARK:

2 Q Based on what you knew of Mr. MacDougall in February
3 of 1993, when you saw the memorandum, did you expect that you
4 were receiving work product from someone who should produce
5 valuable work product?

6 A Right. I was expecting work product from someone
7 who knew a lot about bank fraud because that's all he had been
8 doing and would be able to enlighten me on what the subject of
9 the referral was about.

10 Q Okay. Mr. McDowell, we've handed you now copies of
11 two separate documents. The first -- I apologize on the
12 copies. The Bates stamp numbers on some have been cut off,
13 but I'll represent that the first document, it's a number of
14 documents stapled together, beginning with a February 18th,
15 1993 memorandum to John Keeney from Douglas Frazier, and the
16 Bates stamp number on that should be 006683. And I'll suggest
17 if you want to confirm that, go back a few pages and you will
18 see 006687.

19 Mr. Fishman. I've already done that, and I think the
20 current position is correct.

21 BY MR. CLARK:

22 Q The last page is 006717. And then the second
23 document is the memorandum we have been discussing some, from
24 Mark MacDougall to your attention, 007041-007045.

25 Did you have the opportunity to discuss the memorandum

1 from Mr. MacDougall with him before passing the document along
2 to anyone else in the Department?

3 A Well, I'm sure I had the opportunity, but whether I
4 did or I didn't, I don't remember. Probably talked to Carver
5 about it, but -- Alan Carver.

6 Q Alan Carver?

7 A Who was my principal deputy in charge of the
8 financial institution fraud part of the Fraud Section. But
9 whether I talked to Mark, I probably did, I just don't
10 remember.

11 Q At the time that you got the memorandum from Mark
12 MacDougall, did it occur to you that there were any errors in
13 some of the facts that he recited in the memorandum?

14 A No.

15 Q Would it have surprised you to learn that there were
16 errors in certain of the facts that he recited?

17 A I probably would have been surprised, yeah. He
18 didn't have a reputation for making errors.

19 Q Okay. And when you got this memorandum in February
20 of 1993, were you aware that -- withdrawn.

21 Did it occur to you when you received this in February of
22 1993 that Mr. McDowell did not include citation to a single
23 reported Federal case in his analysis of this matter?

24 A You can tell just by looking at it that he didn't do
25 it.

1 Q Did that occur to you in February of 1993?

2 A I don't know whether it occurred to me or not. I
3 have -- I don't remember -- I haven't dwelled on it since I
4 read it, but you can tell from looking at it that he didn't.

5 Q Is this a matter that you considered to be of some
6 importance at that time?

7 A Yes.

8 Q Is it a matter that deserves some care and
9 deliberation?

10 A Yes, I think it does.

11 Q Would you have expected that Mr. MacDougall's
12 treatment of the controlling law in this situation would be
13 thorough?

14 A Yes. That's what he did for a living, and I would
15 have expected that he would have provided me with accurate
16 legal advice.

17 Q Okay. Do you know of any reason why Mr. MacDougall
18 would have been less than thorough in his presentation of the
19 facts and the law?

20 A No.

21 Q Documents that we've received from the Department
22 indicate that Mr. MacDougall received this task no earlier
23 than Monday, March 22nd, and as you can see --

24 Mr. Fishman. I think you misspoke. I think you said
25 earlier than Monday, March 22nd.

1 Mr. Clark. Thank you.

2 BY MR. CLARK:

3 Q No earlier than Monday, February 22nd, and his memo,
4 as you can tell, is dated February 23rd.

5 Are you aware of any reason why Mr. MacDougall would
6 have -- withdrawn.

7 Were you aware of any deadline that was given to
8 Mr. MacDougall in preparing this?

9 A No. If he did it in a day, there probably was a
10 deadline. That would be the only reason to do it that
11 quickly, but I don't recall one. Normally when you get
12 something over, you're supposed to respond in a reasonably
13 smartly -- you know, reasonable period of time, but I don't
14 recall any particular deadline or why he only had a day to do
15 it.

16 Q Eventually, this memorandum ~~from Mark MacDougall~~
17 made its way to Mr. Keeney. After Mr. Keeney received it, did
18 you have the opportunity to speak to Mr. Keeney about it?

19 Mr. Fishman. I have to --

20 Mr. Clark. Excuse me.

21 Mr. Fishman. The only reason I object is, I'm not sure
22 this is entirely consistent with Mr. Keeney's testimony about
23 having made its way to Mr. Keeney at some point. I think
24 there's --

25 Mr. Clark. Withdrawn.

1 BY MR. CLARK:

2 Q Mr. McDowell, there is evidence to indicate this
3 memorandum was sent from the Fraud Section up to Mr. Keeney's
4 office. Subsequent to February 23rd, 1993, did you have
5 occasion to discuss this memorandum with Mr. Keeney?

6 A You mean in the same period of time?

7 Q Prior to March 19th of 1993.

8 A I don't recall speaking to Keeney about this with
9 him.

10 Q Having been a trial lawyer for many numbers of
11 years, have you ever heard the terms "passive" and
12 "aggressive" used to describe prosecutors?

13 A Not often, but I mean, I understand what "passive"
14 and "aggressive" are.

15 Q Can you just state your understanding?

16 A Passive --

17 Q You mean generally.

18 A Yeah, passive -- right.

19 Q Okay. Is it fair to say that two prosecutors can
20 look at the same facts and one can determine that a case
21 should move forward to presentment to the grand jury while
22 another prosecutor might decide that that is not warranted?

23 A I think it happens quite frequently.

24 Q And in February of 1993, as Mr. Mark MacDougall's
25 memorandum indicates, Mr. and Mrs. Clinton were indicated in

1 the criminal referral to be witnesses.

2 At that time, did you understand that their designation
3 as witnesses could perhaps change if this were to proceed
4 forward?

5 A There's always one of a number of possibilities,
6 sure.

7 Q In other words, it's not an unusual occurrence for
8 people to be designated as witnesses when an investigation is
9 in its infancy, and later on, with the accumulation of
10 evidence, it's determined that they may have some criminal
11 culpability themselves?

12 A I think it happens. I think usually when you get a
13 referral you expect the witnesses to be witnesses and the
14 subjects of the referral to be the eventual defendants, but it
15 certainly happens in the course of investigations that
16 situations can change.

17 Q Prior to February of 1993, how much experience had
18 you had in reviewing criminal referrals from various
19 regulatory agencies?

20 A Most of my experience -- very little is the answer.
21 Most of my experience had been in getting referrals from the
22 traditional Federal criminal investigative agencies, like the
23 FBI, or the Secret Service or ATF, some substantial amount of
24 referrals from Inspectors General in corruption cases; but
25 regulatory agencies, rather little.

1 Q Can you give me an approximate number of the
2 criminal referrals you had seen from regulatory agencies prior
3 to February of 1993?

4 A Well, the actual referral, this may have been the
5 first. Usually I would see a pro-memo done by the
6 prosecuting attorney that wouldn't as a matter of course
7 include the referral. It might quote a referral if that was
8 necessary, but I wouldn't see the referral.

9 Q The memorandum that you received from the
10 investigating agencies such as the Federal Bureau of
11 Investigation, the Bureau of Alcohol, Tobacco, and Firearms,
12 when you read them, you had a certain expectation as to the
13 prosecutability of the facts presented; is that correct?

14 A After I read them.

15 Q In other words, that was --

16 A I didn't mean to make a joke, but sometimes agents
17 will toss you a report that's worthless and other times
18 agents, if it's a different agent, might give you something
19 very carefully done. If you knew the agent, you might have an
20 expectation before you read it, but all other things being
21 equal, you would have to read it to know, even to form an
22 opinion as to whether or not it was prosecutable.

23 Q Generally, did they present such memos early on in
24 their investigation or when they thought they had sufficient
25 evidence to go to the grand jury, or was it a combination?

1 A I think it varies. It varies among agencies and it
2 varies really among agents.

3 Q In February of 1993, did you have an understanding
4 of the stage at which the regulatory agencies were supposed to
5 submit criminal referrals?

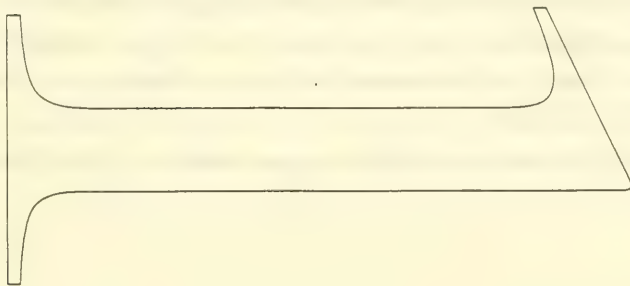
6 A I had a general understanding that in financial
7 institution fraud, where the referrals often would be made at
8 a very early stage, there was an awful lot of weeding out, in
9 fact, often done by the FBI, but in some cases, by the
10 prosecutors.

11 Q Okay. Go ahead.

12 A That's okay.

13 Q Based on Mark MacDougall's experience, did you defer
14 to him in the conclusions that he reached in his memorandum?

15 A Well, I did, and the fact that it came up through
16 Carver. The whole point of getting ~~something from~~ them was to
17 get two people who were used to dealing with this type of
18 report and type of crime and who could make a very good
19 assessment of the merits of it.
20



DCMN QUINTERO

Q In a couple of instances in his memorandum, Mark MacDougall states that he lacks certain information. For example, on page 2 of the memorandum, which is Bates stamp number 007042, under heading C, Summary of Factual Allegations: "According to the referral, James and Susan McDougal were shareholders and directors of Madison Guaranty Savings and Loan of Little Rock Arkansas. James McDougal is also identified as an officer of the institution. The extent of the McDougals' equity interest in Madison Guaranty in and of the office or offices held by James McDougal are not specified in the referral," end quote.

Are you aware of any prohibitions on Mr. Mark MacDougall from acquiring any information that he would need to make an assessment of this matter?

A I don't think he was prohibited. I don't think that he would have gone out, and in the state of what we were doing there, and ask for an investigation. In that sense, it's kind of a common sense prohibition, but there was no explicit prohibition on him from doing anything he thought necessary. But I would have been probably surprised if he had opened up a big investigation to find out the answer to that question.

Q Well, is that something he could have done perhaps with a phone call?

A If he had thought it was necessary, I mean, there

1 were names of the investigator, and her supervisors are in the
2 referral, as I recall. If he had thought it was necessary, he
3 could have. And I guess if I had thought it was necessary, I
4 could have asked him to do it. But apparently, he didn't and
5 I didn't.

6 Q Was it your understanding at the time that the
7 extent of a person's ownership of shares of stock in a
8 corporation could be relevant to the issue of intent?

9 A I don't know if that's true on these facts. I mean,
10 a lot of things can be relevant but it doesn't immediately
11 leap out to me how relevant it is.

12 Q Well, if you look at page 007044 and 7045, Section
13 E, Analysis, and I'm pointing particularly to the bottom
14 paragraph, the paragraph that begins on the bottom of 7044:
15 "The referral does not include allegations of conduct
16 suggesting a level of criminal intent necessary to satisfy
17 that element of any of the principal Federal bank fraud
18 statutes."

19 And then on the next page, he goes on to cite some
20 pattern jury instructions.

21 Did it occur to you at the time that intent was an issue
22 that Mr. Mark MacDougall considered important?

23 A Well, he put in it a relatively brief memo, so I
24 assume he thought it was important.

25 Q In fact, in the first full paragraph on 7045, he

1 states: "The absence of facts establishing criminal intent on
2 the part of the MacDougall's argues persuasively against the
3 initiation of a criminal investigation," close quote.

4 So it appears that this was something very significant to
5 him?

6 A Right.

7 Q When you were trying organized crime cases, did you
8 prosecute conspiracy offenses?

9 A Yes.

10 Q Is it fair to say that a typical jury instruction
11 concerning the formation of an illegal agreement, a
12 conspiracy, is that people should look at the defendant's
13 conduct and make inferences, reasonable inferences from their
14 conduct?

15 A Yes, you can get an instruction like that.

16 Q If you go to 7042, the bottom paragraph, again under
17 the Summary of Factual Allegations: "In support of these
18 allegations, the author of the referral describes some 76
19 banking transactions nearly all involving the making
20 presentment or payment of checks by one of the McDougals or by
21 business entities associated with the McDougals. Based solely
22 on this information, it would appear that the McDougals
23 regularly issued checks on Madison Guaranty accounts with
24 insufficient funds. ~~Once payment was made on these checks,~~
25 the resulting overdraft would often be funded by a check drawn

1 on another McDougal account at Madison Guaranty which
2 frequently created yet another overdraft in the second
3 account."

4 In light of this recitation of facts, did you accept
5 Mr. MacDougall's statement that there were no facts relevant
6 to criminal intent at face value?

7 Mr. Fishman. Are you asking him about that particular
8 statement by itself? I mean, I'm unclear what your question
9 is.

10 Mr. Clark. Yes. I'm asking him if in light of those
11 facts --

12 The Witness. I think it's a tad too general, in a
13 sentence, but I accepted what he meant by it.

14 BY MR. CLARK:

15 Q That it wasn't even worth looking at?

16 A I think that from MacDougall's point of view and
17 what I expected him to do, they get referrals all the time
18 from the regulators and I think it was good that the
19 regulators had a relatively low threshold of making a referral
20 so that they wouldn't sit on a case that cried out for
21 prosecution, when they are not criminal lawyers, but the
22 result of that policy was that you would get truckloads of
23 referrals in this, a business district like Dallas, where he
24 came from, or other places, Los Angeles or Boston, where there
25 have been lots of failures and lots of investigations. And

1 part of the job of a Federal prosecutor is to weed out the
2 ones -- they all have some facts in it, otherwise presumably
3 the agent and the supervisors in the RTC wouldn't have made a
4 referral.

5 But you're supposed to have a sense of which things are
6 likely to blossom into prosecutable cases and which aren't,
7 and also which are worth prosecuting, even if you
8 theoretically could prosecute the case, which is imprudent to
9 accept and devote resources to. I think in that sense, this
10 comment takes on meaning. I don't think he literally meant
11 there were no facts, because in his own memo he had some facts
12 which suggest intent, although even there the absence of facts
13 in the referral to whether or not there is any loss or whether
14 or not there was any notice to State regulators about this
15 pattern of overdrafts might have colored whether or not it was
16 really a fact showing intent.

17 Q In that regard, if you would go to 7045 in that
18 first full paragraph, where he talks about the absence of
19 facts establishing criminal intent. I direct your attention
20 to the sentence that begins towards the right margin on the
21 fifth line: The payment of checks drawn against deficient
22 balances and the waiver of overdraft fees are common if
23 improper accommodations regularly extended by banks to
24 substantial customers.

25 And there is no citation to the referral itself as a

1 basis for that statement.

2 Was that something you were aware of at the time?

3 A Well, I knew in my own bank account at the
4 Department of Justice Federal Credit Union, if I write an
5 overdraft, they'll cash the check. Of course, they charge me
6 interest on it. Apparently, I'm not considered an S&L
7 biggie. But in that sense, I knew -- I wasn't aware until I
8 read the memo, mostly because of my lack of familiarity with
9 bank fraud prosecutions, that it was a common practice in the
10 industry, but it certainly makes sense to me. And my credit
11 union will do it for me, I'm sure S&Ls will do it for
12 customers or insiders.

13 Q On that same page in the recommendation, it refers
14 to Fraud Section standards. Would it be standards of the
15 Fraud Section at the time you were the chief --

16 Mr. Fishman. Mr. MacDougall is asking where that
17 reference is.

18 BY MR. CLARK:

19 Q In the recommendation, in the second line: Current
20 Fraud Section standards for prosecution.

21 Would that include making assumptions that are contrary
22 to the actual facts?

23 A As a standard?

24 Q Uh-huh.

25 A No.

1 Q Okay.

2 So that in fact Madison Guaranty Saving and Loan had an
3 express policy prohibiting overdrafts, that would contradict
4 Mr. MacDougall's memorandum; wouldn't it?

5 A I don't know that -- all of them, for all I know,
6 have express policies against them. I think he was talking
7 about what actually happens in the S&L world that he was
8 familiar with, which at the time was down in Dallas.

9 Q Well, in this document he was trying to asses a
10 specific factual situation; right?

11 A Right.

12 Q We've received from the Department a publication
13 called the "Financial Institution Fraud Manual" that was
14 prepared in 1994, and it lists you as the section chief.

15 Were you involved in the preparation of the document or
16 was it done by subordinates?

17 A I made sure my name was spelled right and blessed
18 it. There are lots of publications in the Department, almost
19 uniformly to be valuable, done by people with substantial
20 experience. And in the case of something like that from the
21 Fraud Section, it would be written and vetted by the people
22 who do it all the time, and then I will take a look at it to
23 make sure that I liked it.

24 Q Did you -- did you -- withdrawn.

25 Did the fact that the Clintons were involved in this

1 matter, to your understanding, color Mr. Mark MacDougall's
2 analysis, either to scrutinize the allegations more carefully
3 or less carefully?

4 A Well, I would hope it would have made him scrutinize
5 it more carefully. I imagine it would.

6 Q So then you would be surprised to learn, for
7 instance, that on page 7043 in the last paragraph,
8 Mr. MacDougall says that the Clintons are claimed in the
9 referral to be those who -- among those who allegedly gained
10 from the transaction referenced in the referral and then,
11 quote, "this claim is based upon the implication by the author
12 of the referral that the Clintons may have invested in one or
13 more real estate ventures undertaken by the McDougals,
14 reference at page 5." End of quote.

15 Mr. Fishman. I assume it means referral at page 5, not
16 reference at page 5.

17 Mr. Clark. Yes. That's my understanding.

18 BY MR. CLARK:

19 Q Would it surprise you that in fact the Clintons were
20 named as principals of one of the real estate companies in the
21 referral?

22 A It probably wouldn't surprise me, but right now I
23 would have to look it up to see.

24 Q Well, Mr. MacDougall managed to correctly divine
25 that Senator Fulbright was a principal of another real estate

1 company. And if you will notice on page 7045, in the next to
2 last paragraph, Senator Fulbright is excluded from the group
3 of people who don't have or would not appear to have any
4 relevant information.

5 You don't know why Mr. MacDougall failed to pick up the
6 fact that was clearly stated that the Clintons were principals
7 in Whitewater development, do you?

8 A No, I don't. What --

9 Mr. Fishman. Wait, are you making a representation
10 that's clearly stated in Mr. MacDougall's report. I guess my
11 objection if this is a discovery deposition to determine what
12 Mr. McDowell knows and what transpired during the time, that's
13 fine. But asking Mr. McDowell to compare and reach
14 conclusions about what's contained in a 25-page referral, and
15 I can't honestly say whether he's read it or evaluated it
16 lately, is a little unfair I think.

17 Mr. Clark. I want to know two things: Number one, was
18 he aware of certain things at the time; and number two, based
19 on his personal dealings with Mr. Mark MacDougall, what he
20 knew about him at the time, whether he would expect this type
21 of error to be --

22 Mr. Fishman. Well, I think the problem is --

23 Mr. Clark. -- created by --

24 Mr. Fishman. The problem is you're testifying as to
25 whether it is an error or not. I'm not meaning to suggest it

1 is or is not an error. I'm not in a position to make that
2 judgment. That's either for the committee or someone else to
3 make that judgment.

4 My only statement is if you want to ask Mr. McDowell
5 about whether Mr. MacDougall was someone he trusted and
6 whether he relied on his judgment, that's fine, but asking him
7 to draw conclusions about whether Mr. MacDougall's memo is a
8 correct analysis of the facts at this juncture without giving
9 him time to analyze it himself, strikes me as unfair and
10 counterproductive.

11 BY MR. CLARK:

12 Q Mr. McDowell, I refer you to page -- I will go by
13 the page number on the referral, page 12, and that's on the
14 upper left-hand side. And if you look towards the bottom of
15 that page, Whitewater Development Corporation, Principals
16 James and Susan McDougal, Bill and ~~Hillary Rodham~~ Clinton.

17 In February of 1993, you were not aware of any reason why
18 Mr. Mark MacDougall would have missed that information; were
19 you?

20 A No, but frankly, until you called it to my attention
21 just now, I didn't pick up that he had missed it, so --

22 Q After Congress passed the Financial Institution
23 Recovery and Reform Enforcement Act in the late 1980s; did I
24 get it correct?

25 A I don't know. I think you did. I've been trying to

1 think of that myself.

2 Q FIRREA, the Department of Justice placed some
3 emphasis on financial institutional crimes; isn't that
4 correct?

5 A That's right.

6 Q And in fact, the Department created a category that
7 it referred to as major financial institution fraud cases; is
8 that correct?

9 A Yes.

10 Q Okay.

11 And are you familiar or were you familiar in February of
12 1993 -- that's withdrawn.

13 In February of 1993, were you familiar with the criteria
14 that the Department used for designating matters as major
15 financial institution fraud cases?

16 A Yes.

17 Q Okay.

18 Can you just list the criteria?

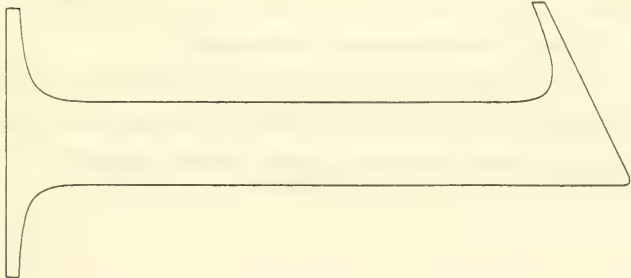
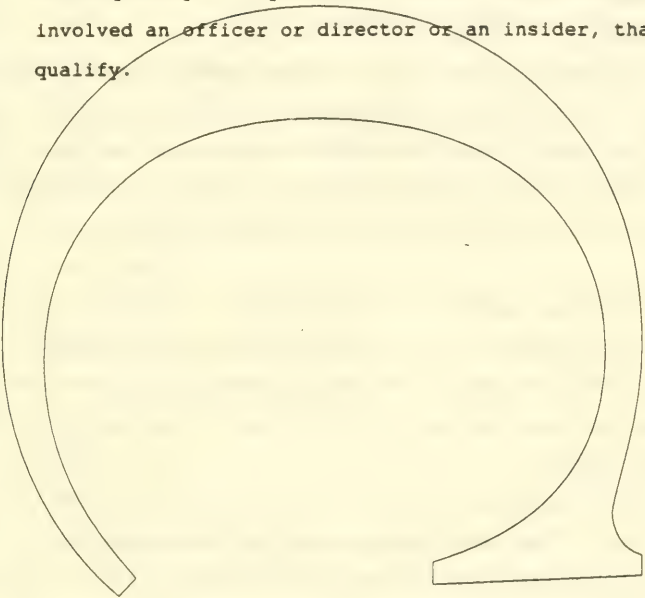
19 A If the loss was over \$100,000 or there was
20 involvement by insiders, officers and directors, there may
21 have been a few others, but those are the ones that come to
22 mind.

23 Q Okay.

24 And those are in the disjunctive; correct?

25 A Right. If you had a loss of 100,000 or more, that

1 would qualify. If you had a loss of less than that but it
2 involved an officer or director or an insider, that could
3 qualify.
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1 RPTS STEIN

2 DCMN MAYER

3 Q Okay. To your understanding, when you read this in
4 February of 1993, was Mr. MacDougall supposed to be making an
5 evaluation merely of whether there might be a prima facie
6 case, or was he supposed to be taking into account elements
7 that might go into a basic defense that might have jury
8 appeal?

9 A He was trying to tell us what the case was about --
10 people in the chain of command would have much experience
11 reading a RTC referral -- and to give us some sense of what
12 the case was about in the context of the U.S. attorney's
13 requested recusal.

14 Q At that time, were you aware of the fact that the
15 U.S. attorney, who was claiming that his office had a
16 conflict, had submitted his resignation which was going to be
17 effective March 1st?

18 A I have since read his letter. I didn't focus on
19 that at the time.

20 Q You don't recall discussion of whether it might be
21 best to just hold off and allow the matter to become moot?

22 A I don't understand what that means.

23 Q If Mr. Banks, and he is the U.S. attorney in Little
24 Rock -- if the reason for his presentation of the matter for
25 the Justice Department's consideration was the prior

1 experience that he had with Mr. MacDougall and he was going to
2 be leaving the office, wouldn't that reason have gone away?

3 A Sure, when he left, it would have, but my focus on
4 his request was that it wasn't an appropriate recusal request
5 in the first place, whether or not he was there or not.

6 Q Did you need to get Mr. Mark MacDougall's memorandum
7 to come to a conclusion as to whether the recusal request was
8 appropriate?

9 A Strictly speaking, I think you could make a quick
10 judgment on whether or not -- at least I could, on whether the
11 recusal was appropriate, but I think you almost never do
12 something like that in the abstract. You would want to know
13 what is the case about, that has got him all excited. I think
14 that was one of the main functions of Mark's memo, was to give
15 me a sense of what is this case all about.

16 Q But there was nothing in Mr. Mark MacDougall's
17 memorandum other than a reference to the fact that there had
18 been the prior acquittal, any discussion of the merits or
19 demerits of the recusal in the context of a prior acquittal?

20 A I don't think he would have any particular expertise
21 on that issue.

22 Q As a matter of Department of Justice policy, the
23 fact that a person has been acquitted on a prior occasion does
24 not preclude further prosecution with regard to other actions
25 that may involve criminal culpability?

1 A With active criminals, it happens all the time,
2 Mafia people, drug figures who are not in jail.

3 Q From your experience with the Organized Crime
4 Section, you are familiar with the name Gotti?

5 A Sure.

6 Q Mr. Gotti, who I think was convicted in '93, he had
7 been prosecuted federally in the middle 1980s, I think?

8 A Right, by the same office.

9 Q The Eastern District of New York?

10 A Right. That is the kind of thinking, when I said I
11 didn't think it was a particularly tough call on Banks's
12 recusal, because that is not grounds for recusing yourself or
13 your office.

14 Q Was the fact that Bill and Hillary Clinton were
15 named in the referral something that colored or -- withdrawn.

16 Was that a factor that influenced your review of Mr. Mark
17 MacDougall's memorandum?

18 A I think it was an important fact, but I don't think
19 it influenced the review. The review was, is the recusal
20 appropriate; and to a secondary extent, what is the case all
21 about?

22 Q Now, the fact that Mr. Mark MacDougall recommended
23 that the case not proceed against Mr. Jim McDougal -- and so
24 the record is clear, their names are spelled differently, and
25 we have no information that they are related in any way -- the

1 fact that he recommended that the investigation not proceed,
2 that did in fact confer some benefit to Mr. and Mrs. Clinton,
3 did it not?

4 A I think it had a bigger impact on Mr. and
5 Mrs. McDougal than Mr. and Mrs. Clinton.

6 Q That is not to say that it didn't have impact on
7 their lives?

8 A I don't think people like being witnesses, but I
9 don't think it is such an onerous duty that would put it in
10 the category of impact.

11 Q Did it occur to you in February of 1993 that it was
12 conceivable that if the investigation of Mr. McDougal
13 proceeded, that you might be faced with a situation which
14 actually arose later in '93 with regard to David Hale?

15 A No. Because I don't think -- I don't think anybody
16 in February '93 would foresee David Hale later. When you say
17 "conceivable," any set of facts like this conceivably could
18 result in anything. As a practical matter, it didn't seem
19 like expending resources on this case in light of the U.S.
20 attorney's reluctance, the FBI reluctance, and our analysis of
21 it was a worthwhile endeavor. The RTC could come back with
22 new facts or new referrals.

23 I don't think there is any pattern of blindly following
24 every RTC referral. That is the reason they invoked the case
25 category, to give a sieve, because there are probably

1 thousands of these referrals every year, and there is no way
2 the Justice Department could follow up every one of them.

3 Q But the Department did wish at the time to follow up
4 on potential major cases?

5 A Sure, and left enough room to include cases that
6 weren't obviously major if there was a articulable reason for
7 it. That didn't mean pursuing bad cases, but major cases.

8 Q Are you familiar with Ira Raphaelson?

9 A Yes. He was a former U.S. assistant attorney in
10 Chicago and acting U.S. attorney in Chicago, and then received
11 a presidential appointment as the Special Counsel to the
12 Attorney General for Financial Institution Fraud.

13 Q When approximately did he leave the Department of
14 Justice?

15 A Certainly before January 20, 1993, but I think it
16 was either late December or sometime in January.

17 Q The position of Special Counsel; when was that
18 filled, after he departed?

19 A Probably not until the next summer maybe or spring.

20 Q Who was the person who --

21 A Gerald Stern.

22 Q The Department has a Carl Stern. To your knowledge,
23 are they related?

24 A No.

25 Q And Gerald Stern came aboard in the summer?

1 A That is my memory of when I met him.

2 Q After this period in February of 1993, when was the
3 next time that this matter, meaning specifically the
4 investigation of Madison Guaranty Savings & Loan or the
5 investigation in Arkansas in which the names of Bill and
6 Hillary Clinton arose, came to your attention?

7 A Later in the year, I guess. I think we have
8 documents that would fix that. I am guessing in September.

9 Q And what were the circumstances then?

10 A Jack Keeney called me over to his office and Joe
11 Gangloff of the Public Integrity Section called me and we sat
12 down and got with Irv Nathan, the principal Associate Deputy
13 Attorney General.

14 Q It is your recollection that the first notice you
15 got of that meeting was that very day?

16 A As I came over.

17 Q What happened when you got to Mr. Keeney's office?

18 A Irv told us a long story about someone that he
19 didn't identify at the time, but who later turned out to be
20 Jeff Gerth of The New York Times, who had told him about David
21 Hale and apparently had talked to Hale and his lawyer and told
22 the story that Hale was telling, and apparently impressed on
23 Irv -- since he didn't use the names, I am adding -- but
24 impressed on Irv that the U.S. attorney's office wasn't
25 accepting the story and that this was a lead that had to be

1 followed up and something should be done, something to that
2 effect. So Irv was passing it on to us.

3 Q And approximately how long did the meeting last?

4 A Half an hour maybe, maybe a little longer than
5 that.

6 Q Was there any discussion of any course of action
7 that should be taken?

8 A Irv just said, you people handle it. He wanted us
9 to get some handles on what was going on and if we needed to
10 follow up to do it. After he left, the three of us remained
11 and discussed what we would do.

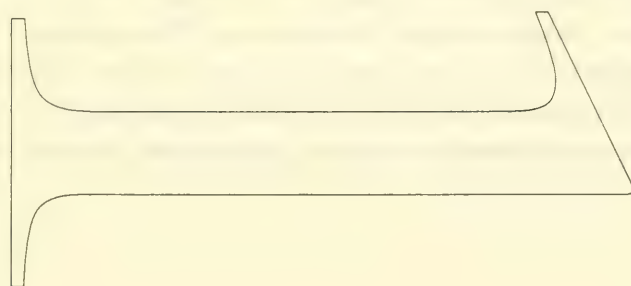
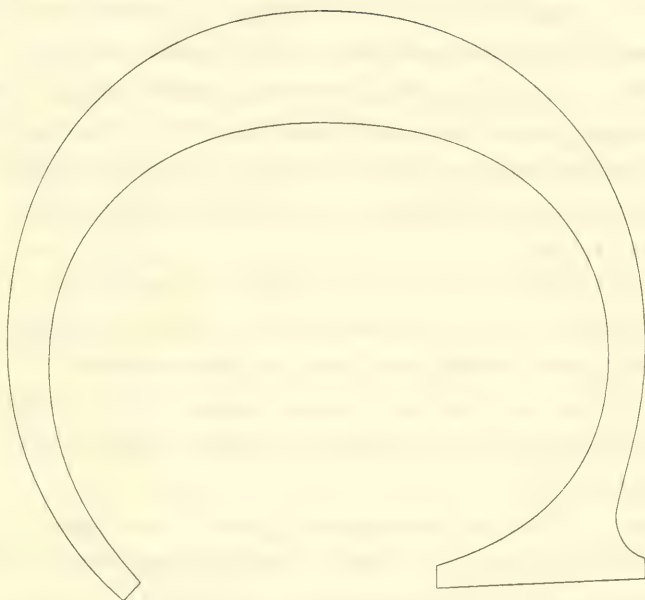
12 Q Can you tell me what you discussed at that time?

13 A Mostly getting the information to the FBI, seeing
14 what they knew about it. It sounded like an FBI case and
15 turned out to be, I think, also a Small Business
16 Administration Inspector General case -- but get the
17 information to them, find out what they knew about it and see
18 if what the U.S. attorney was doing was appropriate and follow
19 up on it.

20 Q Did you take any action immediately at the
21 conclusion of this meeting?

22 A Well, I know I wrote a memo for Keeney to the FBI.
23 I don't remember whether I called the FBI or Keeney did. But
24 whatever we did, we did it right away. How it broke down
25 between me and Joe, I would have to put my head together with

Joe to figure it out.



1 DCMN QUINTERO

2 Q That morning Alan Carver sent by facsimile a copy of
3 a number of the documents that were related to Mark
4 MacDougall's February 23rd memorandum, specifically Mr. Banks'
5 letters of October 1992 and January of 1993. On September
6 20th, in the morning, did you discuss with John Keeney either
7 Mark McDougall's memorandum or these other documents that
8 related to it?

9 A I doubt that we discussed Mark's memorandum. We may
10 have speculated as to whether or not the story we were getting
11 from Irv had anything to do with the previous matter.

12 Q Do you have recollection of being present when the
13 request was made that Mr. Carver send the documents by
14 facsimile?

15 A I have no recollection. I could have been. For all
16 I know, I called him. Normally, ~~Jack would not keep~~ files, so
17 the section that would keep files would have it. I don't
18 remember that being a major thing.

19 Q What was the next action that you took in connection
20 with the matter? I am referring to the Hale matter and the
21 things that you had discussed in Mr. Keeney's office.

22 A The next action, I don't know. From then on, it
23 seemed for months, until Fiske took over, we were involved on
24 a daily basis talking to the FBI, when Little Rock was still
25 in it talking to them, trying to find out what the case was

1 about, and after that taking over the case.

2 Q So in the period from September 20, 1993 until the
3 end of October of 1993, were you pretty much making daily
4 reports to Mr. Keeney?

5 A No, not unless I had something to say, but it was a
6 constant topic -- it was not the only thing we were doing, but
7 was a matter of importance; probably the most important thing
8 we were doing.

9 Q Tell me the sources of your information during that
10 period, if there were more than one?

11 A The FBI is probably the biggest source of
12 information. To some extent, maybe to a greater extent than
13 for me, but my people would talk to the U.S. Attorney's Office
14 and get information from them. I would get it through
15 Carver.

16 Q You said "my people". Was there anyone besides Alan
17 Carver that you had tasked to be involved in this gathering of
18 information?

19 A Carver was supposed to set it up. What day we
20 decided that we needed to have somebody get ready for this
21 before we took the case over -- we started to put together a
22 team because it seemed pretty obvious that we would be taking
23 the case over, but the exact date I don't remember.

24 Q Who was involved in the decision-making process
25 about the composition of the trial team that was going to be

1 ready and then eventually take over the matter?

2 A That would be me and Carver and another Deputy
3 Chief, John Aterberry, who would be in or out. It depends on
4 whether or not he was there more than anything else, but we
5 would discuss things.

6 Q You mentioned that Joe Gangloff was at the meeting
7 on September 20th. At the time what was his title?

8 A He was and I believe still is Deputy Chief of the
9 Public Integrity Section.

10 Q Was there consideration given to whether the Public
11 Integrity Section should be involved in the trial team?

12 A Not specifically. If the case got to a point where
13 there was evidence against the Clintons or somebody in the
14 White House that would have triggered the Independent Counsel
15 Act had there be an Independent Counsel Act, probably Public
16 Integrity would have taken over the case. But as long as the
17 allegations were fraud and the expertise of the people in the
18 Fraud Section would develop the facts quickly, it stayed in
19 the Fraud Section. We didn't want to interfere in the
20 proceedings. It was basically a liaison between the two
21 sections.

22 Q Was that a decision that he agreed with?

23 A As far as I know, he did.

24 Q The information you were obtaining during this
25 period of time, who were you providing it to?

1 A You get a lot of stuff in reports. It would be
2 normally to my boss at the time, Larry Urgenson, Deputy
3 Assistant Attorney General. And to some extent, Jack Keeney.

4 Q Was Mark MacDougall still with the Department in
5 September of 1993?

6 A I think he was gone by then. He definitely wasn't
7 involved in this report.

8 Q In any event, you don't recall any discussion of
9 involving him?

10 A I probably, because he was gone -- I just don't -- I
11 think he left in the spring.

12 Q Going back for a second to this first meeting in
13 Mr. Keeney's office and in that period of time, September of
14 1993, you have no recollection of any prior knowledge of the
15 allegations that Mr. Hale was making concerning the Clintons?

16 A That was the first time I had ever heard of Hale.

17 Q Were you involved in any or were you present when
18 any phone calls were made to the United States Attorney's
19 Office in Little Rock that day?

20 A That day, I don't think so. I made calls to the
21 U.S. Attorney's Office in Little Rock from my own office. I
22 don't recall calling from Keeney's office.

23 Q Who were the people that you talked with in Little
24 Rock in the period between September 20th and the end of
25 October?

1 A I have some notes on that, somebody named Johnson.

2 Q Michael Johnson; does that name sound familiar?

3 A Yes. I think he was one of the supervisory
4 assistants.

5 Q At the FBI who were the people you were dealing with
6 to accumulate information?

7 A The Section Chief, Tom Kubic. And then he had -- he
8 put people on it and occasionally I talked to them and
9 occasionally I talked to them and Kubic.

10 Q Was Jane Erickson a person you had dealings with?

11 A Yes.

12 Q And how about Fred Verinder? Was he a person --

13 A He was a Deputy Assistant Director.

14 Q But was he a person that you were communicating with
15 during this period about the matter?

16 A I probably communicated with him, but whether it was
17 about this matter, I doubt. He wouldn't have been involved in
18 the factual work that we were involved in. That is not to say
19 that I never talked to him about it, but it wouldn't have been
20 anything particularly significant. If I wanted something from
21 the FBI, it would have been through Kubic.

22 Q During this period of time did you become aware that
23 there were additional criminal referrals submitted to the U.S.
24 Attorney's Office in Little Rock regarding Madison Guaranty?

25 A I think that was one of the first things we learned

1 from the U.S. Attorney's Office.

2 Q Do you have a recollection of learning the
3 information substantially after the referrals had been
4 submitted, or learning about their submission
5 contemporaneously?

6 A I don't understand the question.

7 Q Okay. Do you have any recollection that you were
8 informed of the receipt of new referrals by the U.S.
9 Attorney's Office in Little Rock more than a week after they
10 had actually been submitted?

11 A I guess I understand the question, but I don't
12 understand enough -- I learned of it -- I believe I learned of
13 it in talking to Johnson because he was complaining that there
14 was stuff in the paper and I don't think they had gotten the
15 referrals. They were mad about something, I think it was
16 that, the U.S. Attorney's people, that they were hearing about
17 these referrals but didn't have them or they had the referrals
18 but didn't have the evidence. There was some kind of
19 contretemps going on involving these referrals.

20 Q Do you have any recollection of asking Mr. Johnson
21 any question like how long ago did you receive the referrals?

22 A It sounds like a good question, but I have no
23 recollection of it. It sounds like a logical question, if he
24 had them.

25 Q My point is and my question is, do you have any

1 recollection that you were upset that there was some delay in
2 communicating the information that the referrals had been
3 received in Little Rock?

4 A To me?

5 Q To you.

6 A No. This was not our case. Our initial focus was
7 to follow up on Nathan's lead and request that we make sure
8 something was done on the Hale matter. But then the other
9 referrals were related because it involved Madison and
10 Whitewater. But at that point, it was not our case. We were
11 just trying to make sure that things were happening
12 appropriately at Little Rock. He wouldn't have had any
13 obligation to inform me about them or his office.

14 Q Were you aware that in the period between September
15 20th -- were you aware at the time in the period between
16 September 20 and the end of October, that Mr. Keeney was
17 saying that Ms. Casey ought to be recused?

18 A I don't remember the first time we discussed it, but
19 between September 20th when we had the Irv Nathan
20 meeting -- and what is the other time?

21 Q The end of October.

22 A I don't have a specific memory, but I am sure we had
23 that kind of a conversation. At least I had that kind of
24 conversation.

25 Q Just so that we are clear --

1 A It probably wasn't at the early stage. When we
2 first met, if it was on September 20th from the documents, the
3 meeting with Irv Nathan, our focus was trying to get a handle
4 on whether or not the story that we were getting from Irv
5 Nathan was true and whether or not it was being appropriately
6 followed up. That was our focus for some time after that.
7 There was a gradual evolution of opinion. By the end of
8 October that was an obvious foregone conclusion, that she
9 would recuse.

10 Q So your recollection is that in the beginning the
11 position of the Deputy Attorney General as articulated by
12 Mr. Nathan, was just gather evidence, get information
13 concerning this matter?

14 A In other words, he was concerned that this person,
15 and it turned out to be Gerth, had told him about a story and
16 left him with the impression that the U.S. Attorney's Office
17 wasn't following up on it. He got the story from Hale and his
18 lawyer.

19 He wanted to make sure there wasn't something worth
20 pursuing in Arkansas that was worth following up. He wanted
21 us to make sure it was handled as best we could.

22 Q Did you ever have any communications in the period
23 October 20 to the end of October, with Mr. Hale's lawyer,
24 Randy Coleman?

25 A I didn't, no.

1 Q Did you task anyone in the Fraud Section to do
2 that?

3 A I know we were dealing with him at some point, but
4 whether in that period, I don't know. We wouldn't have had
5 any reason to talk to him until it was our case. You can't go
6 into a U.S. Attorney's district and take over a pending case
7 or start talking to defense attorneys.

8 Q Just give me one moment.
9 Why don't we take like a five-minute break.

10 (Recess.)

11 Mr. Clark. Back on the record.

12 BY MR. CLARK:

13 Q Mr. McDowell, I want to go back to the February 23rd
14 memorandum just briefly. In your mind at the time was there a
15 distinction between "there are some facts here indicative of
16 criminal culpability in evaluating the entire situation, they are
17 not worth pursuing" and "there are no facts here that indicate
18 criminal culpability"?

19 A I think it is the former.

20 Q Was there a distinction in your mind between those
21 two statements that I made?

22 A Oh, yes.

23 Q I am going to show you -- one moment. I am going to
24 show you two single-page documents Mr. McDowell.

25 First, is FBI 00001924, and the second is FBI 00001287.

1 The former is a page of handwritten notes that aren't
2 identified. I will represent that we received this amongst
3 documents produced from the Federal Bureau of Investigation.

4 On the upper left-hand side there is what appears to be a
5 date of 9/23/93. The second document, 1287, is a typewritten
6 single page, what appears to be an information memorandum
7 addressed to an individual identified as Rick.

8 Was Rick Wade a person at the Bureau who you were dealing
9 with in this period of time Mr. McDowell?

10 A Right. But primarily we dealt with Carver.

11 Q Do you recall what Mr. Wade's title was at the time
12 in the Bureau?

13 A Well, he was a supervisor in the Financial
14 Institution Fraud area, but his exact title, I don't
15 remember.

16 Q Just directing your attention on page 1924, the
17 handwritten notes, first of all it has "Irons". Were you
18 familiar with somebody named Irons at the time?

19 A I didn't know him, but I believe that was either the
20 FBI agent or supervisor in Little Rock on the Hale case.

21 Q You never had any direct communications with him in
22 that period?

23 A I don't remember talking to him. I would say no.

24 Q It has Irons: And DOJ still pressuring USA to
25 recuse. She disagrees.

1 At that time, September 12, 1993, were you personally
2 applying any pressure to Ms. Casey to recuse herself?

3 A No.

4 Q Were you aware that anyone else in the Department
5 was applying pressure at that time?

6 A Not at that time, no.

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1 RPTS STEIN

2 DCMN MAYER

3 Q Similarly 1287, there is no date on this document,
4 but the first paragraph, Steve Irons, LR -- which I assume
5 stands for Little Rock -- advised that the FGJ, which would be
6 the Federal Grand Jury, in LR, Little Rock, returned an
7 indictment against all three subjects on all four counts. LR
8 will arrest the individuals this p.m.

9 The record shows the 23rd or the 24th, it would appear.

10 In the second paragraph, additional information received
11 from Irons is that the USA in LR, Little Rock, is receiving
12 pressure from DOJ to recuse herself from this matter.

13 Looking at this document, would your prior two answers be
14 the same?

15 A Right. If this is about September 23rd, I wasn't
16 aware that we were trying to get her to recuse.

17 Q The next two documents I am going to show you -- the
18 next two that I am going to show you, Mr. McDowell, are two
19 E-mails which have been provided in discovery by the
20 Department. The first is dated Monday, October 4, 1993 and
21 bears Bates stamp number 014273 and -14274. And the second
22 document I am going to show you --

23 Mr. Fishman. He has the second one already, I think.

24 BY MR. CLARK:

25 Q You should have October 4 and October 12.

1 A Yes.

2 Q The October 12 E-mail is Bates stamp number 014275
3 and -276. Would you agree that these appear to be E-mails you
4 sent on the respective dates?

5 A Yes.

6 Q On the second page of each there is some information
7 contained. I would characterize this as the delivery
8 information. On page 14274, the October 4 E-mail indicates
9 that the recipients are Carver, Keeney and F-A-R-R-I-N-G,
10 which I believe is the first seven letters of a longer name.

11 A Joanne Farrington.

12 Q Who is she?

13 A At the time, the other Deputy Chief of Public
14 Integrity.

15 Q And just to be complete, Gangloff, that would be Joe
16 Gangloff?

17 A That is right.

18 Q Ms. Farrington was in Public Integrity, you said?

19 A There were two Deputy Chiefs. She was one and
20 Gangloff was the other.

21 Q And then on the October 12th E-mail, page 14276, the
22 recipients indicated are Mr. Keeney and Mr. Gangloff.
23 Mr. Carver and Ms. Farrington are not included on the October
24 12th one. Can you tell me whether during this period of time
25 between September 20 and the end of October you had a standard

1 list of people that you would send your communications to, or
2 did it change, or was it ad hoc?

3 A It was probably more ad hoc, but it would have been
4 a relatively small group of people.

5 Q Okay.

6 Mr. Fishman. I assume you are speaking of E-mails
7 regarding this case.

8 Mr. Clark. Absolutely.

9 BY MR. CLARK:

10 Q Besides Mr. Carver, Mr. Keeney, Mr. Gangloff and
11 Ms. Farrington, was there anyone else whom you considered to
12 be within this information circle on this case during that
13 period?

14 A If I was going to give a routine message to
15 somebody, no. If I was returning a call --

16 Q Were you communicating directly to the AG's office
17 during that time?

18 A David Margolis was a good friend of mine, but I
19 doubt that I talked to him on this, Nathan probably once or
20 twice.

21 Q It is fair to say that --

22 A And he would probably initiate it more than I
23 would.

24 Q So is it fair to say that you were not under the
25 impression that you personally had to keep the deputy's office

1 apprised as closely as you had to keep Mr. Keeney and some of
2 these other people apprised?

3 A Right. I would have to keep Mr. Keeney apprised
4 because he was the boss. It would be his job to keep the
5 deputy's office apprised.

6 Q You made some reference, when we were discussing the
7 RTC referrals, to there being a little dispute at the time
8 between the Bureau and the RTC about providing the documents.

9 A I think the U.S. attorney's office and the Bureau on
10 one side versus the RTC.

11 Q I have a couple of questions about the October 12th
12 E-mail. You speak of this some and particularly in the fourth
13 full paragraph.

14 Mr. Fishman. To be fair, I believe it is also referred
15 to in the first E-mail.

16 Mr. Clark. It is. I agree it is, but it is more
17 comprehensively spoken of.

18 Mr. Fishman. To the extent I am trying to show when
19 things began and ended and we are dealing with two documents,
20 I don't want --

21 Mr. Clark. To the extent we can save you
22 cross-examination, I am happy to do so.

23 Mr. Fishman. It is not cross-examination, Mr. Clark.

24 BY MR. CLARK:

25 Q There are a couple of sentences. Johnson, meaning

1 Michael Johnson, first assistant U.S. attorney in Little Rock,
2 expected the files shortly, but they never came. He finds
3 this especially frustrating because the RTC referral is of
4 very limited usefulness when the USA is already familiar with
5 the case. Here what they need is the underlying documents.
6 Also the previous RTC referral last year in this matter from
7 the same RTC local lawyer was of dubious value and drew highly
8 speculative conclusions. Essentially you have a nearly
9 useless referral tail wagging a valuable document dog.

10 Were you speaking for yourself or were you characterizing
11 Mr. Johnson's comments in that part of your message?

12 A It is hard to rip them apart, but I think mostly it
13 was speaking my own opinion of what was going on in Little
14 Rock.

15 Q And the referral last year in this matter, you
16 didn't mean the Hale case?

17 A No. I meant the one that we have been talking
18 about --

19 Q The referral that led to Mark MacDougall's
20 February 23rd, 1993, memorandum?

21 A Right. In fact, the RTC, I don't think was involved
22 in the Hale case. That was a Small Business Administration
23 IG, and the FBI made that case.

24 Q What was it that brought the 1992 RTC referral to
25 your mind and caused you to speak of it in this E-mail; do you

1 remember?

2 A No. It is the same case, same bank, but --

3 Q Okay. Had you reviewed Mr. Mark MacDougall's
4 memorandum in the period after March of 1993?

5 A I don't think so, no.

6 Q So your characterization of the referral in your
7 October E-mail is based on your memory from earlier in the
8 year?

9 A Right.

10 Q I show you next a two-page document and on the first
11 page the Bates stamp may be cut off. It is 007358. The
12 second page is 007359. There is an urgent report stamped with
13 the date November 11, 1993. You are familiar with the form?

14 A Yes.

15 Q And you are familiar with the purpose of this form?

16 A Yes.

17 Q Now, did you have any discussion -- you are listed
18 on the front page in connection with the designating unit with
19 regard to the matter that is being discussed, correct?

20 A Right.

21 Q Do you recall having any discussions with Mr. Keeney
22 prior to the preparation of this document about the document?

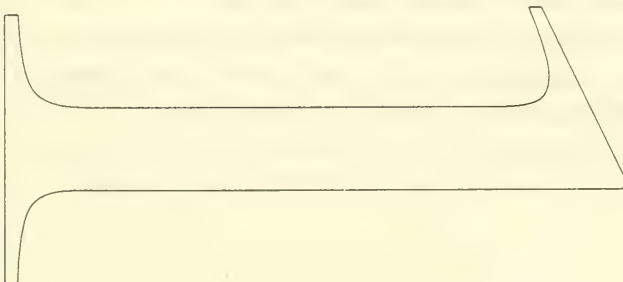
23 A No. That doesn't mean that I didn't have any. It
24 just means I don't recall it. Let me read it all.

25 Q Sure.

1 A There probably was some discussion, given the
2 contents of it. I just don't recollect.

3 Q Is this something that you probably read
4 contemporaneously?

5 A Yes. It wouldn't have gone forward without me
6 reading it.



1 DCMN PARKER

2 Q I would like to refer your attention specifically to
3 the final paragraph. The Criminal Division's Fraud Section
4 has formed a team of trial attorneys who will be prepared to
5 assume responsibility for the investigation of these matters
6 if that should prove necessary.

7 So is it your recollection that by November first the
8 composition of the team had been confirmed?

9 A We wouldn't have said that unless we hadn't.
10 Whether everybody put on it was thought of by then -- but
11 certainly Mackay and Nixon and Bostwick, I would imagine.

12 Q In terms of experience within the Department, I am
13 somewhat familiar with Mr. Mackay's, but not Mr. Bostwick and
14 Mr. Nixon. At that time, were they people who had a
15 significant amount of experience in the Department, to your
16 mind?

17 A They were , I think, at different stages in their
18 career, but they worked in bank fraud. That was the point of
19 putting them on the team. Mackay was a very senior department
20 attorney, former U.S. Attorney, and these other fellows were
21 considered good, reliable people by Carver. I think Nixon had
22 more experience than Bostwick. He was junior person.

23 Q As we know, you always need a junior person to do
24 the grunt work.

25 A Right.

1 Q So it wouldn't be unusual to have people of varying
2 degrees, because they performed different tasks?

3 A The common denominator was they all did work for
4 Carver.

5 Q We have discussed the Little Rock investigation with
6 the United States attorney and the first Assistant United
7 States attorney in Little Rock. The United States attorney
8 has not requested our assistance in investigating or
9 prosecuting these matters to date.

10 Were those statements -- did you have any disagreement
11 with those statements in November of 1993?

12 A No.

13 Q At this time, November 1st, were you aware of anyone
14 pressuring Paula Casey to recuse herself?

15 A No, but I don't --

16 Mr. Fishman. Maybe the word "pressuring" is the issue.
17 What do you mean by pressuring?

18 BY MR. CLARK:

19 Q Anyone saying to Miss Casey that she should recuse
20 herself.

21 A I wouldn't necessarily be aware of that. That
22 wouldn't have shocked me to find out that that was what was
23 going on, but I didn't know of it. I think it is important to
24 draw a distinction because I think it was right that she
25 recuse, and pressuring has sort of an negative connotation. I

1 think it was appropriate that somebody talked to her.

2 Q I want to withdraw the characterization in the
3 word. To your knowledge, no one had ever expressed to Miss
4 Casey prior to November 1st, Miss Casey, you should recuse
5 yourself?

6 A To my own knowledge, it wouldn't have shocked me to
7 find out that had happened. I don't think I met her until
8 that meeting in Washington. I don't think I had talked to her
9 before that. Probably Mackay, if he had been down there, had
10 talked to her, but it would have been out of place for us to
11 raise the issue with the U.S. Attorney of recusal unless she
12 raised it, but I don't recall her doing that.

13 Q By "we," are you referring specifically to the Fraud
14 Section or some broader --

15 A It is not clear to me now who the "we" was then.
16 Mr. Fishman. Not in the document.

17 BY MR. CLARK:

18 Q Your testimony was we would not have done that.

19 A I mean "we" in the Fraud Section. If I had talked
20 to her, and you would think I would remember because I only
21 remember meeting her once -- it is possible that I talked to
22 her on the phone. I would have to see a record to see if I
23 did. If she had raised the question, I wouldn't have had any
24 hesitancy in easing the decision, but I think it would be out
25 of place for a Section Chief to call a U.S. Attorney and say,

1 you ought to recuse.

2 Q You were communicating on a number of occasions with
3 Michael Johnson, her first assistant?

4 A Right.

5 Q Is it possible that Miss Casey had in effect de
6 facto recused herself --

7 A I don't remember that being the case, but I can't
8 remember one way or the other. It is not unusual for U.S.
9 Attorneys to do their litigation entirely through assistants
10 and not get involved. But in a smaller office like Little
11 Rock she might have been involved.

12 My recollection is she wasn't an experienced criminal
13 lawyer, so she probably dealt through the medium of her
14 assistants. That is speculation.

15 Q When you were dealing with Michael Johnson, was it
16 because he was supervising the case?

17 A I guess, or because he was the boss, first assistant
18 or chief of criminal --

19 Q I am showing you next, Mr. McDowell, a page bearing
20 the Bates stamp 004656. It is one page of handwritten notes
21 dated November -- what appears to be November 2, 1993. Do you
22 recognize the handwriting?

23 A Yes. That is my handwriting.

24 Q This appears to reflect some notes you made of a
25 conversation with Michael Johnson.

1 A Yes.

2 Q Can you read what happens to be the second discrete
3 entry that begins with what appears to be Thursday?

4 A Thursday/Friday in W.D.C. wants to meet.

5 Q Can you illuminate that comment for me?

6 Mr. Fishman. By reading the rest of the document?

7 Mr. Clark. By any means.

8 The Witness. Only from looking at it and trying to do
9 the best I can. It sounded like he is telling me that she is
10 in Annapolis, I think, and that she is going to be in town
11 Thursday or Friday and wants to meet.

12 BY MR. CLARK:

13 Q Do you have any independent recollection -- I don't
14 see anything here, about -- well, I will withdraw that.

15 Mr. Fishman. It does say Annapolis in the previous -- I
16 think we should have Mr. McDowell read the line above it.

17 Mr. Clark. Fine.

18 The Witness. Michael Johnson: Paula is attending U.S.
19 Attorney orientation conference in Annapolis. Thursday/Friday
20 in W.D.C. wants to meet.

21 If at some point there is any credible evidence, Paula
22 Casey will consider recusal.

23 BY MR. CLARK:

24 Q So at this point apparently Miss Casey, then,
25 believed that it was necessary to recuse, at least as

1 Mr. Johnson is reporting it to you?

2 A Right.

3 Q Now, did you communicate to anyone the information
4 that Miss Casey was in the metropolitan area?

5 A I am sure I did.

6 Q Do you know who you communicated that to?

7 A I don't have an independent memory of it. Most
8 likely it would have been Keeney, but I have no specific
9 memory of it.

10 Q Showing you a single page document bearing two Bates
11 stamp numbers 004650 and 004651, the document that does appear
12 is on the portion 004651, and that is a message slip to you
13 from Ginger.

14 A Right.

15 Q That is Miss Trapanotto.

16 A Right.

17 Q She was a secretary?

18 A She was -- she was Jo Ann Harris' secretary. Before
19 that, she may have been Keeney's; I am not sure. She has been
20 in the front office for awhile.

1 RPTS WHALEN

2 DCMN GALLACHER

3 [12:28 p.m.]

4 Q Okay. And at this point Ms. Harris was in the
5 Department but she had not yet become the chief of the
6 Criminal Division; is that right?

7 A I don't -- I was kind of surprised to find that it
8 was late in the year that she -- I would have thought she was
9 Assistant AG by then, but if that's what the record shows. On
10 November 1st, the document has Keeney as acting, so you're
11 right, it must have been that she was in the Department.

12 Q Okay. And I think just a mistake here. I'll
13 represent that November 2nd was a Tuesday and it says, there's
14 a meeting on Thursday, October 4th; I think that should be
15 November 4th at 4:15 in the Deputy's office regarding RTC
16 referral.

17 Now, that meeting was moved up a day at some point. And
18 my question is, do you remember how you were informed that the
19 meeting was moved up?

20 A I'm sure that this -- no, I don't remember but I'm
21 sure if it was this late, a secretary calls you.

22 Q Showing you now, Mr. McDowell a group of pages Bates
23 stamped 00731 through and including 007735, which I will
24 identify as photocopies of various pages of a government
25 appointment book that has been represented to be Joe

1 Gangloff's. There is some handwriting on various of the
2 pages.

3 Do you recognize the handwriting to be anyone's?

4 A No.

5 Q Okay. If you could turn to page 007734, the
6 next-to-last page. You will see an entry at 1:30 AG meeting
7 and next at 2 o'clock 2208 and then conference room,
8 criminal.

9 Did you attend any meeting on November 3rd, 1992, that
10 concerned the matter of Ms. Casey's recusal?

11 A Assuming the date is right, I remember a meeting
12 with Ms. Casey present that I attended.

13 Q Okay. Tell me what you remember about that meeting,
14 please?

15 A I think it was in the Deputy AG's conference room up
16 in the third floor.

17 Q Who can you recall attending?

18 A My recollection is Phil Heymann and Irv Nathan and
19 Paula Casey. There were some people there from the EOUSA.
20 And I think Larry Urgenson was there. I'm not positive of
21 that but I think he was there.

22 Q Do you recall any meeting prior to the meeting with
23 Ms. Casey to discuss the agenda for the meeting with
24 Ms. Casey?

25 A No. I'm sure we gathered on the second floor where

1 the Criminal Division is located but I don't recall what, if
2 anything, was said.

3 Q What do you recall of the discussion in the meeting
4 with Ms. Casey?

5 A There was some discussion about the case and then at
6 some point there was a -- I forget who but the conversation
7 turned to whether or not there should be a recusal by her from
8 the case.

9 My recollection is that she wasn't all that keen on the
10 idea. She was trying to think it through and was at pains to
11 point out that she thought that she and her office could
12 handle the case. And that the counterdiscussion was that that
13 wasn't really the issue of whether or not -- I mean, everybody
14 agreed they could handle it but it would be more appropriate
15 if main Justice handled it and I don't think she came -- my
16 recollection is she didn't come to any conclusion at the end
17 of the meeting.

18 Q Was there anyone from the Department who you
19 perceived to be the principal spokesperson for the
20 Department's point of view?

21 A It's hard to remember. There was general
22 discussion. I don't -- in deference to the Deputy in the
23 sense it was their meeting and their -- their conference room,
24 but and I think that most of the discussion was either Phil or
25 Irv but I don't remember what they said, you know. Everybody

1 was sort of subtly just talking and trying to point out that
2 there was an appearance problem.

3 Q Based on your handwritten notes from November 2nd,
4 was it your impression during the meeting that Ms. Casey had
5 requested the meeting on November 3rd?

6 A All I have to go on is -- I don't even know what she
7 wanted to meet about because I don't remember if Johnson told
8 me or not or just said she wanted a meeting.

9 Q And I just want to clarify one point. I think that
10 you said that at the beginning of the meeting there was just a
11 discussion of the matter generally and then the conversation
12 turned more towards the issue of recusal?

13 A That's my recollection, yeah.

14 Q Did you have any impression at the time that anyone
15 in the Justice Department had come into the meeting with a
16 predetermined conclusion that Ms. Casey would recuse herself?

17 A Well, I probably thought she would. I mean, I
18 thought it was a logical step that she would do it and the
19 question is getting her to come to that conclusion. And if I
20 thought it, I'm sure other people there thought it. I don't
21 know about EOUSA, I have no idea what they thought.

22 Q The November 1st urgent report mentioned an October
23 31st front page Washington Post story, October 31st being a
24 Sunday, discussing the new RTC referrals and it also mentioned
25 a November 1st Wall Street Journal article on the same

1 subject.

2 To your understanding, was the appearance of those
3 articles a factor that was discussed during the meeting with
4 Ms. Casey?

5 A I don't remember if they were or they weren't. I
6 think to the extent that we talked about perceptions, they
7 either were implicit or explicit, I can't remember if anybody
8 referred to them.

9 Q And was -- was there a conclusion to the issue at
10 that meeting with Ms. Casey?

11 A My recollection is that there wasn't, that she was
12 mulling it. I remember she said something to the effect that
13 it was kind of ironic because she was closer to Tucker than
14 she was to Clinton. In a sense, somebody who is not from
15 Arkansas like me makes an assumption that the Arkansas U.S.
16 attorney would be close to the now President, but I think she
17 raised that to the level of in her own mind she was closer to
18 Tucker.

19 Q And that was a thought she had expressed on previous
20 occasions?

21 A Not to me.

22 Q Not to you?

23 A It came as a surprise to me when she said it.

24 Q Did she mention any other names besides Tucker that
25 you remember?

1 A Not that I remember.

2 Q Did Seth Ward's name come up?

3 A Well, if it did, I don't have any memory of it.

4 Q Okay. Once the meeting concluded, did you have any
5 further discussion on that same day with anyone from the
6 Department about the matter?

7 A I must have. I mean, it would be a logical thing to
8 talk about but who -- I'm sure when I went back to the office
9 I talked to Carver about it, but just to recount the way I'm
10 recounting to you.

11 Q It is your recollection that Mr. Keeney didn't
12 attend?

13 A I don't remember him there. There were a lot of
14 people there and the Deputy's conference room is a big, ornate
15 room with a big long table and it seemed to be -- it seemed to
16 me that the table was filled up but I don't remember him. I
17 have a memory, and sometimes memory can be faulty, but I have
18 a memory that Larry was there and he hadn't been really that
19 involved in it. Larry Urgenson, that is. And there wouldn't
20 be a need for two deputies but I could be wrong. I just don't
21 remember Keeney being there.

22 Q When did you learn for the first time that Webster
23 Hubbell had recused himself from matters concerning Mr. Hale
24 and Madison Guaranty?

25 A I think he sent a letter to the Deputy or something

1 and it got circulated.

2 Q Okay. Do you recall discussing the issue with him
3 prior to the time of that memorandum?

4 A With Hubble?

5 Q Yes.

6 A No, I only met Hubble once and it didn't have
7 anything to do with Whitewater. He was the Associate Attorney
8 General in charge of civil matters in the Department and
9 there's rarely any need for me to even get involved with his
10 office, much less the associate.

11 Q Now, you mentioned that there were or was, at least,
12 a representative from the Executive Office for U.S. Attorneys
13 at the meeting. Was there any issue as to what would happen
14 in the event that Ms. Casey recused herself?

15 A Well, there is an issue. I don't remember if we
16 talked about it at the meeting but the next big issue is who
17 takes over the case. And I think there must have been
18 discussion about that.

19 Q Let me -- let me show you a document dated
20 November 8, 1993. It is actually a document with an
21 attachment. Again, the Bates numbers are cut off, but I will
22 describe it as on the top it is a routing and transmittal slip
23 from Gerald E. McDowell, Chief, Fraud Section, to Jo Ann
24 Harris, and attached to it, Exhibit C, a three-page document
25 bearing the heading Office of the Deputy Attorney General, and

1 it is a memorandum to Holders of United States Attorneys
2 Manual Title I, and this document is dated November 19th of
3 1992.

4 And just take a second to read the text and the remarks
5 section.

6 Mr. Fishman. Out loud or to himself?

7 Mr. Clark. To himself.

8 The Witness. Right.

9 BY MR. CLARK:

10 Q Do you remember sending this memorandum to
11 Ms. Harris?

12 A Well, my memory comes from having reviewed i . .

13 Q That is the only source?

14 A Right, but there is no question I wrote it.

15 Q Okay. The one thing I want to discuss is the fact
16 in the fourth sentence it says, quote, "About a year ago,
17 however, the U.S. Attorneys Manual was amended and DOJ policy
18 on recusals was stated." And then it discusses further,
19 whether in the event of the recusal, a recusal, another U.S.
20 attorney's office should be appointed to take over the matter
21 or whether the Assistant Attorney General should designate the
22 appropriate section chief to make a determination.

23 Is that a fair summary?

24 Mr. Fishman. I was going to say I'm not -- I'll let
25 Mr. McDowell answer.

1 The Witness. Maybe I wasn't listening carefully enough.
2 At the risk of making you repeat the question, could you
3 repeat the question, please. I've read the remarks.

4 BY MR. CLARK:

5 Q Okay. The text here concerns a prior practice by
6 the Executive Office for U.S. attorneys --

7 A Right.

8 Q -- to in the event of a recusal, recommend or -- it
9 says here appoint another U.S. attorney to take over the
10 matter?

11 A Right.

12 Q And the purpose of your memo, it appears, is to
13 point out that the Department policy is for EOUSA to report a
14 recusal to the Deputy AG and the relevant Assistant AG?

15 A Right.

16 Q That would be, for instance, Chief of the Criminal
17 Division?

18 A Right.

19 Q And then the Deputy AG can appoint the Assistant AG
20 to take over the matter recused from?

21 A That's right.

22 Q And it contains your recommendation: I recommend
23 that appointment of the Assistant AG become the norm in these
24 matters.

25 A Right.

1 Q To your knowledge, had this policy which was
2 apparently implemented in November of 1992 or -- yes, I will
3 leave it like that. This policy reflected in the attachment,
4 had it been implemented prior to November of 1993?

5 A Well, I can't say to my knowledge, but my belief was
6 that I knew that it had been implemented in some fashion, but
7 I was worried based on listening to Moscato at the meeting
8 that the EOUSA was still up to its previous habit of trying to
9 get the new -- trying to make a neighboring United States
10 attorney the new prosecutor. And I was concerned. This,
11 strictly speaking, doesn't have anything to do with
12 Whitewater. It's more I'm grinding a different ax with Jo Ann
13 Harris to make sure that she weighs in with the Deputy and
14 gets the recusals to come to the Criminal Division.

15 Q Do you recall any follow-up to this?

16 A I don't believe she ever said anything one way or
17 the another to me. I hope she followed it and then my belief
18 is that the Criminal Division gets its appropriate share of
19 recusals nowadays so I guess she did do something, but it was
20 just one of a number of brilliant ideas that got floated
21 across a new appointee's desk.

22 Q Just to be clear, it was not the case prior to
23 November of 1993 that there was never an instance where a
24 recused matter was taken into main Justice; is it?

25 A No, no. As I said, this has nothing to do with

1 Whitewater. My beef was especially during the time that my
2 Larry McWhorter and Wayne Rich, his deputy, were running
3 EOUSA, they increasingly trying to get, either themselves or
4 the Deputy, to appoint another U.S. attorney in recusal cases
5 so there were fewer and fewer recusals in the Criminal
6 Division and I thought that was bad policy and it was.

7 Also, it was against my interests. Frankly, recusals
8 oftentimes brought good cases. So I was -- while I didn't
9 have anything to do with it, I was pleased when the then, I
10 guess Terwilliger under Bill Barr issued the policy because it
11 wasn't the practice, whatever it says in the policy, wasn't
12 what was actually going on, and I thought, good, that's a good
13 change because at least the Deputy has to consider both the
14 Criminal Division and whatever EOUSA recommends. But I was
15 also hoping that the new deputy's office would revert back to
16 a much earlier practice of sending recusals to the Criminal
17 Division so I didn't -- as I said, I thought it was bad policy
18 and didn't lead to good results when neighboring U.S.
19 attorneys got a case.

20 And just so you don't think I have a bias against U.S.
21 attorneys, most assistants are hired to work in a district
22 where they are members of the bar and they are not used to
23 traveling unless the district has a number of divisions, and
24 ~~they are wonderful at doing their work, but~~ Criminal Division
25 attorneys have an expectation of traveling, they are not tied

1 to any one locality. They generally have a portfolio of cases
2 around the country, and I thought it was bad to ask a senior
3 assistant with a caseload of in, say, Denver to go to
4 St. Louis to do an investigation because, you know, it puts a
5 considerable strain on the assistant and it's not really what
6 they had signed up for, and I had seen instances where
7 assistants quickly found they didn't like that assignment so
8 you get a very good assistant who is not happy and sometimes
9 that leads to not as good a performance, whereas the Criminal
10 Division, one of its main functions is to take on that kind of
11 case, and it's not our bread and butter but it's very close to
12 being our bread and butter. So I was using the example of
13 what Moscato said to basically argue to the new assistant,
14 make sure you watch out for this kind of thing.

15 Q Okay. And you have no recollection of following up
16 on that?

17 A Other than it seemed that during Jo Ann Harris'
18 tenure we received -- the division as a whole received a good
19 share of recusals. Now, I don't know how many there were, but
20 I was satisfied that we weren't back in the McWhorter and
21 Wayne Rich days.

22 Q You never had to turn any away because you were
23 swamped?

24 A Well, you don't have the option. I mean, you know
25 you're laughing, but in a recusal you don't have the option of

1 turning it away. Even if you are swamped, you don't have the
2 option. If it's a legitimate refusal, somebody has to fill
3 in.

4 Q Oh, sure but, again, it would be conceivable that
5 the Fraud Division would say, you know, Ms. Harris, look,
6 we're really stretched thin, you know, maybe you should think
7 of giving this to another U.S. attorney's office. You don't
8 recall anything like that?

9 A I'm sure we had the option but I would not ever
10 exercise that, and I doubt that my successor has because it is
11 bad form. If the Department goes to the trouble of appointing
12 you, you'd better handle the case.

13 Q Just very briefly, showing you now 002247 and 002248,
14 these are two E-mails. One, they are both dated November 5,
15 1993; 002247 is from you and 002248 is from Irv Nathan.

16 With regard to these two E-mails, we don't have attached
17 the delivery information on the second page such as we had
18 with the October 4th and October 12th E-mails.

19 Can you tell from looking at the two documents which
20 are -- which have -- bear times that are almost
21 contemporaneous whether they are related?

22 A Well, I can speculate and probably pretty
23 accurately. I'm not 100 percent sure. I had seen this 002247
24 and, frankly, it didn't make any sense to me when I was going
25 through the papers.

1 Q Because it merely says crank it up?

2 A Right. And it is also titled "Dingell," which has
3 nothing to do with the case. But when I saw 002248, it makes
4 sense. But, once again, I'm giving you speculation, not a
5 memory or anything.

6 Q Okay. And --

7 A And I can tell you what I think it is.

8 Q I would appreciate that.

9 A I had asked Irv Nathan if he could get me a
10 videotape if the Department had it. I thought Web Hubble had
11 testified before the Dingell committee. Whatever. I don't
12 think that's still in existence. House Commerce --

13 Q Is this in connection with the Environmental Crime
14 Section investigation?

15 A Right. And I had represented Neil Cartusciello, who
16 was chief of the Environmental Crime Section in his day in the
17 barrel when he was -- that was later in time in this when he
18 was deposed by the committee. And one of the issues was kind
19 of an esoteric issue on a blue sheet that seemed to get to the
20 U.S. Attorney Manual that had everybody in an uproar.

21 I had heard or read in the paper that Hubble had
22 testified before the Dingell committee and reaffirmed the
23 policy on the blue sheet that Neil was being criticized for,
24 so I wanted to get a copy of that video if there was one.

25 It turned out they didn't have a videotape. But then in

1 the second paragraph, Irv tells me: Paul Casey advised me
2 yesterday -- I won't ride the whole thing, blah, blah, blah.
3 Please work with Joe Ann and Jack to put together a game plan
4 to take over as soon as possible. Thanks.

5 I believe what this memo is me --

6 Mr. Fishman. When you say this memo.

7 The Witness. Oh, oh, 002247, although I don't know who I
8 forwarded it to either, probably Mr. Carver with this
9 attachment. In other words, you can forward an E-mail so you
10 won't have to repeat everything saying crank it up because we
11 already had a team and a plan.

12 Q Okay.

13 A I don't know why the times are different but either
14 the computers weren't set the same or that's when they were --
15 these are GAC's documents and maybe that's the time he
16 opened.

17 Q Yes?

18 A Opened, too. In other words, he opened my forwarded
19 and he opened what was attached and it would show two
20 different times.

21 Q Showing you next 00427, a single-page document which
22 is an E-mail dated November 8th and then also 007377
23 through -- what should be 7379 although it doesn't have Bates
24 stamp, it is a copy of Ms. Casey's November 5th letter. Which
25 is behind a transmittal slip to Jo Ann Harris. And also a

1 memo from Ms. Casey to your attention.

2 A Well, this indicates I at least talked to her one
3 other time besides the meeting in the Deputy's office.

4 Mr. Fishman. When he says this, he was pointing to a
5 document labeled 427.

6 BY MR. CLARK:

7 Q Is that correct?

8 A Right.

9 Q Do you recall if you called Ms. Casey or if she
10 called you?

11 A No. I mean, I didn't even -- even though I've seen
12 this before, I didn't even recall the conversation this
13 morning.

14 Q Is there any reason that you know of why you didn't
15 try to find her letter in the Deputy Attorney General's
16 office, as opposed to getting it from her?

17 A I -- no, I don't even know that I cared.

18 Q Okay.

19 A But, you might not be aware. I am about six or
20 seven blocks away from main Justice. Finding something in the
21 Deputy's office is no easier for me than calling Little Rock
22 if that's what I did.

23 Q It certainly seems to be a more reasonable choice.

24 A Right.

25 Q I asked you a question about communications with

1 Mr. Hubbell regarding the matter and just so the record is
2 complete, did you have occasion prior to seeing Mr. Hubbell's
3 recusal memorandum to speak to anyone who was part of his
4 staff in the Associate Attorney General's office on the
5 subject of the Madison Guaranty investigation or the Hale
6 prosecution?

7 A No, unless I didn't know who they were on the
8 staff. I mean, if there was someone there at the meeting, I
9 can't say. But the only time I ever had any contact with
10 Hubble or his staff was a big health care meeting that we had
11 that had nothing to do with bank fraud or Arkansas or
12 Whitewater.

13 Q Okay.

14 A Because health care fraud was a major part of the
15 Fraud Section.

16 Q During the fall of 1993, were there periodically
17 meetings amongst senior members of the Department to discuss
18 current matters?

19 A I guess. As exalted, I tell my wife and kids I am
20 I'm not a senior member in the sense of what you're talking
21 about.

22 Q In other words, a meeting at which the associate,
23 the Deputy, and the Attorney General might attend and obtain
24 very short briefings on significant matters in the various
25 sections and units of the Department?

1 A I'm sure there are meetings like that but I've never
2 attended one.

3 Q 000354 I'm showing you now, Mr. McDowell. And do
4 you recognize the handwriting?

5 A No.

6 Q Okay. On the top it bears the date 11-30-93. It
7 appears to be handwritten notes. And we have MTG, RE, L
8 period, R period, recusal, next line, W slash AAG, comma, GM,
9 small CD, et al.

10 And there are two notes underneath that, what appear to
11 be send copy of Hale indictment to AAG, and then underneath
12 that, what appears to be Hill interest, LaFalce?

13 A SBA.

14 Q SBA and then Gonzalez, HBC, which --

15 A I think it's --

16 Q -- could possibly be the House Banking Committee and
17 then it also it has SBC underneath it.

18 A That might be Senate Banking Committee, I'm not
19 sure.

20 Q Do you recall attending a meeting at the end of
21 November of 1993 to discuss Capitol Hill interest in
22 Ms. Casey's recusal?

23 A I can't distinguish one meeting from the rest. I
24 mean we met a lot. I know there was an issue of Hill
25 interest. I don't remember the Banking Committee interest.

1 I'm pretty sure the SBA committee had -- was looking into how
2 the SBA was handling its affairs and with some interest in
3 this -- in the Hale case.

4 As to the Banking Committees, there was very active
5 investigations by the House Banking Committee in -- I guess
6 that would have been a year earlier on the case down in
7 Atlanta. You think you never forget these things.

8 Q The Dragoul case?

9 A Yeah, the Dragoul case. But that might have been
10 petered out by that time. I don't remember the Banking
11 Committee interest. But if there were anything like that, if
12 somebody -- if we got some word from an agency that there was
13 a committee looking into it, naturally it has an implication
14 on the criminal investigation we clearly would have brought it
15 up. But do I remember this meeting? No.

16 Q Okay. Do you remember at any time taking any steps
17 to make sure that all the "T's" were crossed and the "I's"
18 were dotted in connection with Ms. Casey's recusal as a result
19 of Capitol Hill interest?

20 A No. I'm not too sure what "T's" needed to be
21 crossed or "I's" dotted. Once she recused, the Deputy assigns
22 it to a new person. There is no -- I don't know what else
23 needs to be done.

24 Q Okay. You are not familiar with the actual recusal
25 memorandum that the Deputy Attorney General has to sign off

1 on?

2 A I've seen them but I don't know that it's any less
3 effective for not -- you know, if the thing was never done.

4 Q Okay. You are not required to but if you feel like
5 adding something to your answer go ahead. I noticed that you
6 started to say something?

7 A My only point is not a major one, but on something
8 like this you would take action when you receive oral notice.
9 I don't think you would sit around and wait for a Form 822 or
10 whatever to come in to you.

11 Mr. Fishman. Let me just be clear for the record, I
12 don't think he was making a number up. I don't think there is
13 any Form 822. I just want to tell you that.

14 Mr. Clark. Fine. That would be in our next document
15 request.

16 BY MR. CLARK:

17 Q Showing you now three separate documents. For the
18 record, 005132 is a single-page document. It is a copy of a
19 routing and transmittal slip. It appears 12-7 and then the
20 year is cut off.

21 The second document, Bates stamp number 0805134 through
22 and including 005136. The top page is a Department of Justice
23 form entitled "Action Memorandum. " It bears the date of
24 December 1, 1993. ~~005135 is stamped December 1, 1993.~~ It is
25 a memorandum for Philip Heymann, the Deputy Attorney General,

1 from Anthony Moscato, the Director, Executive Office for U.S.
2 Attorneys. 005136 is a copy of Ms. Casey's November 5, 1993,
3 letter asking that her office be recused.

4 And the third document bears the Bates stamp numbers
5 00208, 0020 and should be 00210. The top document in this
6 stapled set is a routing and transmittal slip dated
7 December 13, 1993. The second page, 00209, is another copy of
8 Ms. Casey's November 5th letter, and the final page is a copy
9 of the December 1 memorandum for Mr. Heymann from
10 Mr. Moscato. This document bears Mr. Heymann's signature --
11 excuse me, his initials, and it is marked that it is signed by
12 what appears to be David Margolis with the bearing of date of
13 12-22-93.

14 A Right.

15 Q The one document 005132, the transmittal slip,
16 something was sent to Mr. Keeney who forwarded it to you and
17 the text reads: I know that the recusal has been orally
18 approved for the reasons stated in Tony's memo, the ones upon
19 which the decision was made. And then the December 13th
20 routing and transmittal slip, is your response.

21 A Right.

22 Q Since was a foregone -- withdrawn.

23 Since was an already completed act, the recusal, do you
24 know of any reason why Mr. Margolis was concerned about the
25 reasons stated in Mr. Moscato's memorandum?

1 A He's very careful and, let me read Moscato's
2 memorandum again. I also think Ms. Casey's memo -- letter was
3 kind of vague and general whereas Moscato's memo goes into
4 detail. He may have just wondered why there was a disconnect
5 between the letter that she sent him, but that's speculation.
6 You ought to ask him.

1 DCMN KRISTOFFERSEN

2 Q You don't recall?

3 A Well, I don't think I ever talked to him about it.
4 But that certainly would explain it.

5 Q Does this set of documents indicate to you, one way
6 or the other, whether Mr. Margolis attended the November 3rd
7 meeting?

8 A Well, I don't remember him being there, and it
9 sounds from his question like he wasn't there either.

10 Q Just give me one moment, please.

11 Mr. McDowell, during the period in which you were
12 involved with this matter, did you discuss it with any person
13 employed on the White House staff?

14 A No.

15 Q Okay. Did you have any direct communications with
16 anyone employed by the Resolution Trust Corporation concerning
17 this matter during the period of October of 1992 to November
18 of 1993?

19 A All my contacts with them would be through Carver.

20 Q Meaning that Mr. Carver would have made the
21 communications; you would not have spoken to anyone directly?

22 A Right.

23 Mr. Clark. Thank you.

24 The witness. Okay.

25 Mr. Fishman. Just a short follow-up.

EXAMINATION BY MR. FISHMAN:

Q During the time that you were involved with this matter, in any respect, do you have any reason to believe that any official of the Department of Justice, in either administration, moved this investigation faster or slower for any political reason whatsoever?

A No.

Mr. Clark. I'm sorry. I just didn't hear that last response.

Mr. Fishman. He said no.

Mr. Clark. Thank you.

BY MR. FISHMAN:

Q And in connection with that, specifically related to Mark MacDougall, Mr. Clark asked you several questions about the adequacy or thoroughness with which Mr. MacDougall completed that memorandum. Do you recall that?

A Yes.

Q Do you have any reason to believe that anyone either above you or below you in the chain of command instructed Mr. MacDougall either directly or implicitly to do a less than credible job for any inappropriate reason?

A No.

Q Would you have put up with or participated in any such decisionmaking?

A No. I was the chief of the Public Integrity Section

1 for a dozen years, and I don't think anybody would have -- it
2 would have occurred to anybody to do it in front of me. It
3 would be another prosecution.

4 Q And in that respect, just give us a little insight
5 that you have, in the 30 years you've known Mr. Keeney, into
6 his reputation in that regard.

7 A Well, it has been 28, because I actually do count.
8 But his -- he is probably the most respected person in the
9 Department. He interviewed me when I got hired, and I worked
10 for him at times in the first two years, and then I've worked
11 with him very closely all the time that I was in Public
12 Integrity and since then, and his only motivation through all
13 the time I've known him is to make sure that the Department
14 does things right.

15 Q Can you conceive of Mr. Keeney intentionally
16 misleading the Deputy Attorney General or anyone else in the
17 Department about anything?

18 A No. I mean he takes his relationships with his
19 principals very seriously and shows them a loyalty which I
20 hope my own subordinates show me. But that's not in his
21 character at all.

22 Q By loyalty, do you mean to suggest anything --

23 A No. I mean he tells -- he would never lead them
24 astray or -- ~~he's not the type that would watch somebody step~~
25 in a pothole that he didn't like. He's a square-shooting guy

1 who believes that the process is as important as the outcome
2 at times. He's just -- he's a wonderful person. I don't know
3 how much of a chance you've had to deal with him other than an
4 interview of him, but he's unique.

5 Q Would he intentionally duck a meeting even
6 hypothetically if he had a disagreement with anybody who was
7 going to be there?

8 A No, I don't think -- he was a prisoner-of-war with
9 the Germans. I don't think he's afraid to meet with people.

10 Q How about to express his views? Was he ever afraid
11 to express his views?

12 A I've been with him many times when he's said things
13 clearly that people don't want to hear. But he's very
14 measured and judicious, he's not the type of person that
15 deliberately inflames people, but he always says what he wants
16 to say, and you either take it or you don't; that's your
17 problem.

18 Q Okay. Now, on September 20th when you were called
19 over to Mr. Keeney's office for that meeting with Mr. Nathan
20 and Mr. Gangloff, is it essentially fair to say that what
21 Mr. Nathan did was pass on this information to the senior
22 career prosecutors in the Criminal Division?

23 A In that area, yeah, because Keeney would be the
24 senior of any area because he's got about 40-plus years.

25 Q Was there any suggestion that things should move

1 faster or slower?

2 A Well Irv is a hurry-up kind of guy, but beyond his
3 personal quirks, he wanted us to get on it.

4 Mr. Clark. The record should reflect that while he was
5 answering the question he snapped his fingers twice.

6 BY MR. FISHMAN:

7 Q Similarly, during the contacts you had with the U.S.
8 Attorney's Office in Arkansas, did you have any sense that
9 there was a reluctance to pursue anything?

10 A No. The person that I dealt with, I think, was a
11 former departmental attorney from Lands Division from my --

12 Q The Lands Division?

13 A Johnson, and he seemed to be, at least on the phone
14 if you can size somebody up, he seemed to be pretty squared
15 away. And I didn't meet the line assistants.

16 Q Mr. Clark asked you a few questions about the major
17 financial institution fraud case category. Do you remember
18 that?

19 A Yes.

20 Q Do you remember when that -- how did that come into
21 being, and when?

22 A Well, it was in place before I took over the Fraud
23 Section. But essentially you had hundreds and maybe thousands
24 of defaults and referrals, and if you just took them in the
25 order that they came in, any office would get swamped. So

1 just to try to bring some order of the mess, she came up with
2 these categories to give FBI offices and prosecutors a clue as
3 to where they should direct the resources, take the biggest
4 failures, don't be screwing around with a \$2,000 failure when
5 you have 20 half-million-dollar failures -- or some cases
6 half-billion-dollar failures -- in your inventory, and
7 because there are other remedies, there are civil remedies and
8 even State remedies, and -- but at the same time leave enough
9 flexibility so if you thought there was a purpose to be -- to
10 taking a case if it was an insider or there was -- it was a
11 vehicle for something else, you could do it.

12 Q Essentially a prioritizing mechanism?

13 A Right.

14 Q You said it was in effect when you took over the
15 Fraud Section in March of '92?

16 A Right. It was something either that Ira Raphaelson
17 came up with or maybe even before him; his predecessor's name
18 escapes me -- Jim Richmond.

19 Q Now, Mr. Clark asked you at one point about whether
20 there had been any departmental contact with Randy Coleman,
21 the lawyer for David Hale. Do you remember that?

22 A Right.

23 Mr. Clark. Specifically in the period.

24 Mr. Fishman. Right. In the period before the Fraud
25 Section took over the investigation.

1 The Witness. Right.

2 BY MR. FISHMAN:

3 Q Let me hand you one of the documents Mr. Clark
4 showed you, which is a document marked with the Bates number
5 014275, which is -- as you previously testified, is an E-mail
6 that you sent on October 12th, 1993, to Mr. Keeney with a copy
7 to Mr. Gangloff. And although it does not suggest that there
8 was direct contact between the Department and Mr. Hale's
9 lawyer during that period, could you read the second paragraph
10 aloud, if you would, for the record?

11 A Johnson confirmed that his office had told Hale's
12 lawyer after the indictment that he should make a proffer to
13 the U.S. Attorney's Office or the DOJ of the information
14 claimed Hale had when he and Hale talked to newspaper
15 reporters. The lawyer conferred with Hale and got back to the
16 USAO with the same old demand that, prior to talking, Hale
17 wanted either immunity or a plea to a misdemeanor. Nothing
18 has developed since then.

19 Q Can you explain what that was all about?

20 A Well, the U.S. Attorney's Office had been dealing
21 with Hale trying to get a plea, and the lawyer was -- it
22 seemed to us a good move, even for the defendant, would be to
23 make a plea and become a witness and then hope to get a very
24 light sentence, if that's the way the chips fall.

25 This lawyer seemed to be playing to the newspaper, making

1 it a publicity thing and asking for a low ball essentially to
2 get a misdemeanor or no charges brought, and that was just out
3 of the question. So basically we're saying there hadn't been
4 much change since the previous negotiations.

5 Q Why was it out of the question?

6 A Well, you had -- at the time, we believed the Hale
7 case was a strong one and that he was not a speculative
8 criminal but an actual one that had the goods on, and to let
9 him walk -- the guy was a lawyer and I think some kind of
10 local judge, although it's not clear what kind -- to let him
11 walk away just because he would tell a story didn't make sense
12 when you get him convicted and get the story at the same
13 time. I thought the U.S. Attorney's Office's position was
14 right on that.

15 Q Okay. There is something in here about making a
16 proffer. Can you explain that?

17 A Well, to avoid incriminating -- having your client
18 make incriminating statements, it's not uncommon that a lawyer
19 will say these are the facts that we could provide you if we
20 made a deal, so the U.S. attorney would have more of a sense
21 of what they would be getting if they made the deal, so we
22 wouldn't be buying a pig in a poke. A lot of that depends on
23 the confidence in the lawyer, whether that will actually
24 ensue.

25 Q Confidence in the defense lawyer?

1 A Right.

2 Q And is there some suggestion that that -- that the
3 prospect of actually making the proffer to the Department
4 rather than to the U.S. Attorney's Office was made available?

5 A I think the defense lawyer wanted to do that. I
6 don't remember whether the U.S. attorney bid off on that or
7 not. I mean that was an option, but if they were having a
8 case, it didn't seem to be a necessary option, they ought to
9 handle it.

10 Q By the way the urgent report dated November 1st,
11 1993, to the Attorney General and the Deputy Attorney
12 General --

13 Mr. Clark. One second, please. I'm retrieving my copy.

14 Mr. Fishman. Sure.

15 Mr. Clark. Thank you.

16 BY MR. FISHMAN:

17 Q I believe it's -- for the record it's Bates stamped
18 7358 to 59, an urgent report dated November 1st. It's from
19 Mr. Keeney and signed by him. Do you actually know who wrote
20 it?

21 A No. It might be a records copy someplace that would
22 have initials on it, but without seeing that --

23 Q Would it have been written by Mr. Keeney personally?

24 A ~~Oh, no. No. Well, he could do it, but it's not in~~
25 the normal course of business.

1 Q In the ordinary course of business it would be
2 generated by somebody below Mr. Keeney in the chain of
3 command --

4 A Probably below me in the chain of command. It could
5 be done by me or by Carver, or it could have been done by one
6 of the attorneys, one of the line attorneys, but I would have
7 to look to see who initialed it.

8 Q Okay. But that would be the routine practice on a
9 document like this?

10 A Right.

11 Q And since these are your notes and the committee has
12 indicated in previous correspondence some difficulty, as maybe
13 we've all had in reading various people's handwriting, if you
14 could look at the document that's Bates stamped 04656, which
15 are your notes of November 2nd, 1993, and if you would be kind
16 enough simply to read the contents of the whole page for the
17 record so that we don't have to try to retranslate it later.

18 A Okay. It's dated 11-2-93.

19 Michael Johnson, colon. Paula is attending U.S. Attorney
20 orientation conference in Annapolis.

21 Paragraph. Thursday, slash, Friday in WDC wants to meet.

2 New paragraph. If at some point there is any credible
3 evidence, Paula Casey will consider recusal.

4 ~~New paragraph. RTC making reckless allegations, dash,~~
5 ~~media hype, dash, premature to set aside.~~

1 Paragraph. Local media says there is no possibility of
2 fair investigation.

3 Paragraph. Issue of when rather than whether if there
4 turns out to be -- it looks like meat.

5 Paragraph. Leak is RTC investigator. And then there is
6 a caret up above I've got written, "Ms. L. Jean Lewis. She
7 forwarded to EOUSA, dash, Donna Henneman all RTC referral
8 copies."

9 EOUSA happened before USAO -- which stands for United
10 States Attorney's Office -- with the suggestion that USAO
11 wouldn't fairly investigate. Extremely serious leak problem
12 at RTC. RTC jerked USAO, slash, FBI around on documents,
13 dash, unusual referral letter. MacDougall not acquitted by
14 reason of insanity, dash, acquitted on the merits.
15 Depression, dash -- looks like a dash -- it says no, but I
16 think it should be not mental disease which would prevent
17 indictment or trial.

18 Q And in the middle of the second to last paragraph,
19 when it says EOUSA had them before USAO, which refers to the
20 RTC referral, the suggestion that USAO wouldn't fairly
21 investigate, whose suggestion was that?

22 A I think Michael Johnson is telling me that's what he
23 believed was the reason for this. It's not my idea. I'm
24 writing down what he says.

25 Q But was it RTC's or EOUSA's belief that the USAO

1 wouldn't fairly investigate?

2 A I think it was RTC's in that context.

3 Mr. Fishman. That's all I have. Thank you.

4 Mr. Clark. Very briefly.

5 BY MR. CLARK:

6 Q Mr. McDowell, in your conversations with Michael
7 Johnson in the period before the Fraud Section took over the
8 matter, did he ever make any statements to you that you
9 perceived to be negative comments on the ability of Fletcher
10 Jackson as a prosecutor?

11 A Not that I recall, no.

12 Q Do you recall Mr. Johnson saying anything about the
13 FBI agents in Little Rock complaining about Mr. Jackson?

14 A Was Jackson the one that had the case, the Hale
15 case? I've just forgotten. I know the name, but I've
16 forgotten who he was.

17 Q Let me rephrase the question. Do you recall
18 Mr. Johnson saying that -- saying to you that the FBI agents
19 were complaining about the assistant who was actually
20 conducting the investigation?

21 A I don't have any -- to cut to the "who" issue I
22 don't have any recollection of Johnson saying that, but I was
23 just trying to place Fletcher Jackson.

24 Q Did you ever get the impression in that period when
25 you were dealing with Mr. Johnson that Mr. Johnson was

1 advocating that the matter be taken over by main Justice?

2 A I don't remember that he was advocating -- he seemed
3 very professional.

4 I was relieved, talking to him, that he seemed like he
5 knew what he was doing, but why I had that feeling I don't
6 know. I just remember he -- you know, you don't know what
7 you're going to get when you call up somebody on the phone.
8 He just seemed like he was on top of his game, but I can't
9 remember what he advocated. That all sort of blurs together
10 in memory.

11 Q Mr. Fishman asked you some questions about the
12 October 12th E-mail and specifically about the plea
13 negotiations with Mr. Hale, and I believe you mentioned in
14 your answer that you understood Hale to be a lawyer and
15 possibly a judge.

16 In situations with lawyers as putative defendants, isn't
17 there a special circumstance relating to the fact that they
18 are lawyers that's often weighed in charging decisions by the
19 Department?

20 A I'm not sure I know what you mean. I know the
21 agents always love to make cases on lawyers and the
22 consequences to lawyers of pleading guilty are greater.

23 Q That's really what I was driving at.

24 A Almost always includes their law licenses.

25 But on the other hand, a lawyer committing a crime is

1 more serious, too, and in most instances, when it's a crime of
2 greed as opposed to, say, a crime of passion or something and
3 this fellow seemed like a real bad apple, it kind of weighs
4 against him in the prosecutor's mind that you're not going to
5 give him a break, although I think the public thinks it's the
6 other way around. But I would say, more often than not, the
7 prosecutor and certainly the agents would want to hammer him
8 just because a lawyer shouldn't be doing that sort of stuff.

9 Q And you had no personal experience during your
10 tenure with the Department, with the Tax Division?

11 A Oh, yeah. I dealt with them all the time.

12 Q I mean --

13 A You'd have to get approval. Any time you bring a
14 tax case, which isn't every day in the week, but it's not
15 unheard of, you have to get the approval of the Tax Division.

16 Q The Tax Division has many cases involving lawyers;
17 wouldn't you say that's fair?

18 A Absolutely.

19 Q And often in those instances a primary subject of
20 discussion is whether the person will plead to a misdemeanor
21 as opposed to a felony?

22 A I think that's always there.

23 Q And, again, it's because of the circumstance that if
24 a lawyer pleads guilty to a felony, in most States, if not
25 all, it's automatic disbarment?

1 A Right. I don't know if that was their policy, but
2 it wouldn't shock me if that was their policy. I've used tax
3 counts against Federal judges, and they never said to go easy
4 or give them a misdemeanor, but I can see in some types of tax
5 offenses a feeling that the punishment would be
6 disproportionate if all the other people who pleaded were
7 getting two months in jail and a lawyer got two months in jail
8 and a disbarment meant it would seem to be disproportionate
9 penalty.

10 So I can see the rational end, but we're not talking
11 about tax offense here. With Hale, if he did all the things
12 that were charged against him, he deserved to plead to a
13 felony.

14 Q But you can see how his attorney might be
15 particularly concerned about that issue for that reason?

16 A Oh, I -- I didn't -- what little we knew about the
17 attorney was that he had a very good reputation in Little
18 Rock.

19 It just seemed like a very risky tax particular -- he was
20 really tossing the dice and hoping to get everything. He was
21 playing the press and being very hardball in his negotiations
22 with the U.S. attorney. If it worked out well, yeah, good
23 luck to him, he would have done a wonderful job for his
24 client, but I don't think it was a good strategy.

25 I think -- my feeling was, he would have been better off

1 trying to make a deal with the U.S. attorney, saying get the
2 lightest felony, get all sorts of promises to tell the judge
3 about cooperation, get a letter from the U.S. attorney, and
4 actually provide usable testimony to minimize his offense and
5 show his rehabilitation, and under the sentencing guidelines
6 get the least possible sentence, because the likelihood of a
7 risky strategy winning was I think small, and I thought the
8 U.S. attorney's strategy was the right one to resist that,
9 because I think the likelihood was -- if this didn't go to
10 independent counsel and all the rest of it, that they could
11 have had a felony conviction and a witness; they didn't have
12 to pick.

13 Q One of the things that Mr. Fishman -- withdrawn.

14 One of the things that you mentioned in your notes from
15 November 2nd is the subject of leaks in the RTC. Now, again,
16 as we said earlier, the previous weekend there had been a
17 front-page story in the Washington Post, the Sunday edition,
18 and the day before these notes there was a story in the Wall
19 Street Journal.

20 Was the issue of control over publicity surrounding the
21 Hale matter and the Madison Guaranty matter a significant
22 factor in the decision whether Ms. Casey should recuse? And
23 I'm speaking about from the perspective of people in the
24 Department.

25 A Well, it's not as simple as that. I think it's not

1 just publicity, say, because lots of U.S. attorneys get
2 involved in cases that are highly publicized and they don't
3 have to recuse.

4 It was just the perception that whatever action she took,
5 for instance, on the plea with Hale, if she had let him go for
6 a misdemeanor or she asked for a felony, no matter which way
7 she went, people would criticize her and say it was because
8 she was a Clinton appointee and was trying to protect him.
9 That kind of publicity was more directly relevant to recusal.
10 She was in a no-win situation no matter what she did.

11 Q My question is just slightly a bit different. Did
12 you perceive that there was any effort on the part of the
13 Department to get the RTC out of the investigation because of
14 a lack of confidence in the RTC's ability to keep matters
15 nonpublic?

16 A Well, at my level I ~~think there was~~. I don't know
17 about higher in the Department.

18 I mean generally when the RTC gives you a case, even if
19 there is no publicity, which is usually the case, you want the
20 FBI to work it, and it's not that you're disrespecting the
21 RTC, but that's just not what they are best at, and if the FBI
22 wants to continue and use them, let them make that decision.

23 But when you add to the fact a possibility of leaks and
24 we didn't -- I didn't know if the RTC was the source of the
25 leaks, but it seemed like a reasonable speculation. When you

1 add that to the mix, so that every move in the case might be
2 the subject of the next day's newspaper article, you know,
3 sure, we would rather have the RTC out of the mix, get the
4 referrals to the FBI and let the FBI start working. But for a
5 lot of reasons that's not unusual.

6 The unusual thing here was one the involvement of the
7 Clintons and also the intense newspaper interest which doesn't
8 usually attend to RTC referrals.

9 BY MR. CLARK:

10 Q Last question: I hope, as you understood, it was
11 the involvement -- to your understanding, what was the primary
12 factor that required Ms. Casey's recusal as far as the
13 Department was concerned?

14 A I think it was just the perception that, no matter
15 what kind of job she did, outside the Department, it wouldn't
16 be perceived as done for the right reasons.

17 Q Okay. In regard to the various persons whose names
18 have been mentioned, was there one or two people who were more
19 significant? In other words, it was Ms. Casey's relationship
20 with one individual as opposed to another that the Department
21 perceived to be more important?

22 A I don't know that I can speak for the Department. I
23 can speak for myself. I had never heard of Jim Guy Tucker. I
24 guess he was governor, but it didn't register with me until
25 this matter. I focused on the President because he's the

1 President.

2 Q And at the meeting on November --

3 A I don't know if he would know her if he fell over
4 her. He was --

5 Q At the meeting --

6 Mr. Fishman. I'm sorry. He's not done.

7 The Witness. I don't know how close, if at all, the
8 relationship it was. At the meeting she seemed to focus on
9 the fact that she was actually closer to Tucker than she was
10 to the President, and that wouldn't shock me. Most U.S.
11 attorneys don't know the President.

12 BY MR. CLARK:

13 Q Okay. But from the Department's perspective it was
14 the same, or different?

15 A I would guess that it was some similarity, but I
16 really don't know. It was the public perception that was more
17 important than the private perception.

18 Q I'm referring specifically to the meeting. Did
19 anyone express at the meeting, in substance, Ms. Casey, you
20 know, it's the relationship with the Clintons here that
21 concerns the Department and that's the reason why we think you
22 should recuse something of that substance?

23 A I don't think it focused on her relationship,
24 because I'm not too sure what, if any, that was. It was the
25 perception that the Clinton appointee as Little Rock U.S.

1 attorney -- there was not even any -- I think -- I don't
2 remember word for word, but I believe there was some effort to
3 make her realize that this wasn't a personal thing that
4 reflected on her but anybody who was U.S. attorney in Little
5 Rock would face the same disability and she just had to come
6 to grips with it.

7 Mr. Clark. I am finished.

8 Mr. Fishman. Nothing further.

9 [Whereupon, at 1:37 p.m., the deposition was concluded.]

November 8, 1995

Mr. Tom Clark
Senior Counsel
Investigations and Oversight
Committee on Banking and
Financial Services
U.S. House of Representatives
Washington, D.C. 20515-6050

Dear Mr. Clark:

The following errata are noted in the transcript of my deposition of Wednesday, September 20, 1995:

1. P. 7, line 20: delete "and" and replace with "in"
2. P. 11, line 5: delete "be" replace with "deal"
line 5: delete "confidence" and replace with
"confidential matters"
3. P. 13, line 25: insert "not" between "that's" and "the"
4. P. 27, line 23: delete "business" replace with "busy"
5. P. 36, line 10: insert "not" between "would" and "have"
6. P. 39, line 24: insert "major" between "the" and "case"
7. P. 53, line 10: delete "we" and replace with "he"
8. P. 69, line 16: delete "third" and replace with "fourth"
9. P. 78, line 1: delete "my"
line 9: insert "Deputy AG" after "then"
10. P. 82, line 1: delete "Paul" and replace with "Paula"
line 2: delete "ride" and replace with "read"
11. P. 84, line 19: insert "as" after "exalted"
12. P. 95, line 1: delete "she" and replace with "we"
13. P. 97, line 8: insert "we" after "that"
line 12: insert "can" after "you"
14. P. 98, line 7: delete "having a" and replace with "handling
the"

15. P. 104, line 19: delete "tax particular" and replace with "tack to take"
16. P. 105, line 1: delete "saying" and replace with "trying to"
17. P. 106, line 23: delete "fact" and replace with "mix"

Sincerely,

Gerald E. McDowell Bk.
Gerald E. McDowell, Chief
Asset Forfeiture and Money
Laundering Section

cc: Joe Reilly
Robert Giuffra
Lance Cole



U.S. Department of Justice

Office of the Deputy Attorney General

Washington, D.C. 20530

October 13, 1995

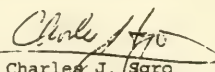
Mr. Robert Giuffra, Chief Counsel
Mr. Lance Cole, Democratic Deputy Special Counsel
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510-6075

Dear Messrs. Giuffra and Cole:

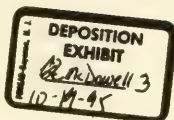
Enclosed for your review are eight (8) additional pages of Joseph E. Gangloff's notes, bearing Bates-stamp numbers A000844 through A000850, apparently relating to Madison Guaranty Savings and Loan and Vincent Foster. Mr. Gangloff discovered these notes within the past one or two days, and provided them to this Office late yesterday afternoon. The circumstances surrounding Mr. Gangloff's discovery of these notes is set forth in the attached memorandum.

If you have any questions, do not hesitate to contact me.

Sincerely,


Charles J. Gfro
Counsel to the
Deputy Attorney General

cc: Stephen Kubiowski
Tom Clark
Joe Reilly





U. S. Department of Justice

Washington, D.C. 20530

OCT 12 1995

MEMORANDUM

TO: Charles J. Sgro
Counsel to the Deputy Attorney General
Office of the Deputy Attorney General

FROM: Joseph E. Gangloff
Principal Deputy Chief
Public Integrity Section
Criminal Division *J. E. Gangloff*

SUBJECT: Notebook relating to Whitewater and Vince Foster

Attached is a notebook that I discovered within the last day or so. It appears to have notes relating to Whitewater and Vince Foster.

Only a few pages of the notebook have been used. Entries appear to relate to my activities on only two days. My best guess is that I picked up this notebook as new when I was rushing to a meeting and did not have the notebook that I was working in handy. Apparently, I thereafter set this notebook aside. I believed that it was a fresh notebook when I recently came across it and discovered the notes.

While I have no significant specific recollection of the events noted therein, I believe that the topics reflected in this notebook have been exhaustively explored in my various interviews on these topics. I regret any inconvenience caused by my untimely discovery of these notes; however, I know that it is necessary to bring this matter to your attention.

I am sending a cc of this note (without attachment) to the Office of Professional Responsibility.

Please let me know whether there are any other actions that you would like me to pursue.

Attachment

cc: Michael E. Shaheen, Jr.
Counsel
Office of Professional Responsibility

10/12/95 17:25

202 514 3003

PUBLIC INTEGRITY

hh8000-y

003

2

J. H. H.

- Miss Ray

(301) 279-4990

(622-1260)

(5:00)

4

Solve

JAH → Try to get substance file

D.M. → Book Police did not have custody

JAH → mcd search as for Foster files

① relating to Little Rock

② Foster papers

③ Nuss inventory - if there is one

④ from Library Potts - FBI report
re handling of papers

⑤ document 3 (Gibson)

⑥ sentence Nuss / after

P.H.

- hand

E

Foster

WH/DOJ
DHS/DOJ

no call

* USDOJ* advice

→ close this

no call

* media* hand papers* benefit

→

no call

* GoP* coverage

10/12/95 17:26

202 514 3003

PUBLIC INTEGRITY

Lh8000-v

2008

State Dept.

5

(1) check unmarked } check regs

(2) interview Miss Foye → publy not

(3) Charles Foster not re range of admission

(4) now not done

mbe

wilson

6

5:30

6:30

12/23 big meet

Casper

→ issue → "humble intention" / Let also not be
 "gentle"
 - doc was

[IC - who was involved?]

[PI's view]

P.O.H. (Casper) → recognizing issue in O+M -
 separate fund

IAH → it denies O+M = 2 good D.W.

Casper → "tactical issue" only IAH

IAH - public policy = K.H. King" or
 or even public policy

* → judge "chose" case [IC → victim fall
 [T.H. → was a "wrong" case]

Casper discusses
 "natural" situation
 Klassen

10/12/95 17:26 202 514 3003

PUBLIC INTEGRITY b480007A

2008

7

① use Kelly?

① ~~hostility~~
 effect of
 hostility

JC → MTO = cost \leftarrow $\frac{w}{100} = \Delta$ too high

② ~~hostility~~
 effect of
 hostility

→ JC — How much de novo?

MTO & W's = pricing problem

③ ~~hostility~~
 effect of
 hostility

[JC: dismiss OAM (good w/ police)]

- use Kelly — need to rise

weekend & week

④ might lose it

if

Dismiss OAM

then re-interview

⑤ keep him
 venue here

[JC: dismiss hostility]

② separate trials

③ King

prob.
 - reg
 - misadventure
 - miss version ok to fill

8

Debarment / De novo

- PS Local DOJ debar Ref to State Department
 (given right of entry)

> Debarment cannot = de novo
 → Can VE id id can with

can reject

no in process

- reversible know at risk

- disbar is prejudicial

indict A

appeal A

[appeal]

**DEPOSITION OF STEPHEN J. McHALE
IN RE: S. RES. 120**

THURSDAY, OCTOBER 19, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of STEPHEN J. McHALE, called for examination pursuant to notice of deposition, at 9:50 a.m. in Room 640 of the Hart Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, Esq.
Majority Associate Special Counsel
JAMES S. PORTNOY, Esq.
Minority Associate Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

BARBARA C. STERGIS, Esq.
BRADLEY A. BUCKLES, Esq.
Department of the Treasury
Office of the General Counsel
1500 Pennsylvania Avenue, NW
Washington DC 20220
On behalf of the Deponent.

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PROCEEDINGS

1 MR. O'CALLAGHAN: Good morning. My name is
2 Michael O'Callaghan. I'm counsel for the majority on
3 the committee. This deposition is conducted pursuant
4 to Senate Resolution 120, a resolution which
5 establishes a special committee administered by the
6 banking committee conducting investigation involving
7 Whitewater Development Corporation, Madison Guaranty
8 Savings and Loan Association, Capital Management
9 Services, Incorporated, the Arkansas Development
10 Finance Authority and other related matters.

11 Section (1)(b)(2)(e) of the Senate
12 Resolution 120 authorizes investigation and public
13 hearings into whether the report issued by the Office
14 of Government Ethics on July 31, 1994 and related
15 transcripts of deposition testimony, one, were
16 improperly released to White House officials or
17 others prior to their testimony before the Committee
18 on Banking, Housing and Urban Affairs.

19 Pursuant to Senate Resolution 229, or two,
20 were used to communicate to White House officials or
21 to others confidential RTC information relating to
22

4

1 Madison Guaranty Savings and Loan Association or
2 Whitewater Development Corporation. This will
3 primarily be the focus of today's deposition.

4 When were you requested to testify?

5 THE WITNESS: About two weeks ago.

6 MR. O'CALLAGHAN: Just for your
7 information, this deposition is in advance of public
8 hearings which probably are likely to occur late
9 October, early November. It's likely that you will
10 probably be asked to testify at the hearing.

11 During this deposition, we will ask you a
12 series of questions. You will be testifying under
13 oath. If you don't understand a question, let me or
14 Mr. Portnoy know and we will rephrase the question.

15 If you need a break, also let us know.

16 The stenographer will prepare a record of
17 questions and answers. The deposition will be
18 treated as committee confidential until commencement
19 of the hearings. We also ask that you keep the
20 substance of the depositions confidential as well.

21 Prior to the hearings you will receive a
22 letter from the committee telling you that you may

1 come to the Senate to review the transcript of your
2 deposition and make note of any corrections for
3 transcription on an errata sheet.

4 If you are called to testify at public
5 hearing, you will be permitted to have a copy of your
6 deposition transcript four days in advance of your
7 testimony.

8 My understanding is that's how it worked
9 last time, last round, and that's they expect to do
10 in this upcoming round.

11 You may be represented by counsel. Are you
12 represented by counsel today?

13 MS. STERGIS: Yes, he is. Barbara Stergis,
14 general counsel's office, Treasury Department.

15 MR. O'CALLAGHAN: Anyone else representing
16 Mr. McHale?

17 MR. BUCKLES: Brad Buckles, general
18 counsel's office, Department of Treasury.

19 MR. O'CALLAGHAN: Objections to the form of
20 questions will be noted for the record. Counsel may
21 object on the grounds of privilege or relevance.
22 Committee chairman may rule on objections where the

1 witness refuses to answer a question.

2 Could you please swear the witness.

3 MS. STERGIS: Can we just have a second?

4 MR. O'CALLAGHAN: Sure.

5 (Pause.)

6 MS. STERGIS: Can you state what you mean
7 when you say that the witness is to keep the content
8 confidential?

9 MR. O'CALLAGHAN: We're just asking that
10 the witness keep the contents of the deposition
11 confidential.

12 MS. STERGIS: As to whom?

13 MR. O'CALLAGHAN: As to anyone.

14 MS. STERGIS: Other than counsel.

15 MR. O'CALLAGHAN: Other than counsel, yes.

16 If that's a problem, you can state it on the record.

17 MR. BUCKLES: I'm not sure what the purpose
18 of that is and what it's designed to do. These are
19 matters that we're all working on all the time, and
20 any of the items interrelate with each other, and
21 looking at documents, then I don't know that we want
22 to be in a position where we get -- where we're

1 agreeing to something that in the course of preparing
2 other witnesses that we're going to be accused of
3 violating some sort of confidentiality rule.

4 MR. O'CALLAGHAN: We're just asking that
5 the substance of the witness's testimony not be --
6 that that be treated confidential and not shared with
7 other witnesses.

8 MR. BUCKLES: Well, I'm just not too sure
9 what you mean by the substance of the testimony. If
10 you mean a lot of the details, I mean, obviously the
11 substance of the testimony is going to be about what
12 you've referred to here, which is item 1(e), and the
13 fact that he's here testifying about that is going to
14 be known to the other witnesses, and I don't know if
15 you're in a position where you're suggesting that
16 Mr. McHale or Ms. Stergis or I can't, when we're
17 working with the other witnesses, indicate that
18 that's what the testimony is about. I have a
19 difficult time trying to draw the line on what you're
20 saying, and I don't want to agree to something that
21 I'm later going to be accused of having violated.

22 MR. O'CALLAGHAN: I understand. If you'd

1 like, what we can do is draft up a letter to you
2 outlining exactly what the request is with regard to
3 the treating of the substance of the deposition
4 that's taken here today. Is that acceptable?

5 MR. BUCKLES: Well, I would like to see
6 that before I have the witness agree to something on
7 this. I mean, even in grand jury situations, there's
8 not necessarily any absolute requirement that a grand
9 jury witness can't talk to you.

10 MR. O'CALLAGHAN: It's a request that we
11 have made of all witnesses.

12 MR. PORTNOY: In much the same way as there
13 is in a grand jury, there is limitation on discussion
14 of your testimony, which is different from a
15 limitation on discussion of underlying events.

16 MS. STERGIS: What did you say?

17 MR. BUCKLES: I understand what you're
18 saying.

19 MR. PORTNOY: Would that be a fair
20 characterization of the rules governing grand
21 juries?

22 MS. STERGIS: I didn't hear what you said.

1 MR. PORTNOY: A witness is precluded from
2 discussing his testimony before a grand jury, which
3 is different from --

4 MS. STERGIS: Absolutely not true.

5 MR. PORTNOY: Not with counsel, certainly,
6 but you can talk about the substance, you're just not
7 supposed to talk about --

8 MS. STERGIS: As a former assistant, I will
9 tell you that a grand juror is entitled to do
10 whatever he would like with respect to what he
11 himself testified to in the grand jury, and this is
12 not even a judicial proceeding.

13 MR. PORTNOY: That's fine.

14 MR. O'CALLAGHAN: Well --

15 MR. PORTNOY: It's your play.

16 MR. O'CALLAGHAN: Why don't we go off the
17 record for a second.

18 MR. PORTNOY: Thought we were.

19 MR. O'CALLAGHAN: No, we weren't.
20 (Discussion off the record.)

21 MR. O'CALLAGHAN: We're back on the
22 record. While we were off the record, there was some

10

1 discussions with regard to the committee's request to
2 Mr. McHale to keep substance of discussions of the
3 deposition today confidential, and counsel for
4 Mr. McHale would like to make a statement with regard
5 to that request.

6 MS. STERGIS: We do not agree with that
7 request and counsel for the committee is free to ask
8 whatever questions it wishes of this witness and
9 future witnesses as to the people with whom they
10 discussed this matter.

11 MR. O'CALLAGHAN: And when you say you
12 don't agree with the request, you're not acceding to
13 the request; is that correct?

14 MS. STERGIS: We are not acceding to the
15 request.
16 Whereupon,

17 STEPHEN J. MC HALE
18 was called as a witness for examination and testified
19 as follows:

20 EXAMINATION

21 BY MR. O'CALLAGHAN:

22 Q Please state and spell your full name for

1 the record.

2 A Stephen J. McHale, M-c-H-a-l-e.

3

4

5 Q Your present business address?

6 A 1500 Pennsylvania Avenue, Northwest,
7 Washington, D.C. 20020.

8 Q Mr. McHale, what's your present position?

9 A Deputy assistant general counsel for
10 general law and ethics of the Department of Treasury.

11 Q Could you please give me a review of your
12 employment history since you graduated from college.

13 A I worked as a floor laborer in New York
14 City for about five months in 1977, four months. I
15 then went to law school in Washington, D.C.

16 Q Where did you attend school?

17 A American University, starting in 1977.
18 During the summer of 1978, I clerked at the economic
19 development administration of Department of
20 Commerce. During the school year from 1978 in the
21 summer of 1979 and during the school year of 1979/80,
22 I clerked for a firm called Bonner, Thompson,

12

1 O'Connell & Gaines in Washington, D.C.

2 Graduated from law school in 1980 and
3 clerked for Judge John Hess on the D.C. Superior
4 Court. In 1981 I went to work for the office of the
5 special counsel, Merit Systems Protection Board as a
6 trial attorney for three years. During that time I
7 was on detail to the U.S. Attorney's office in D.C.
8 for six months, five months, civil division.

9 In 19 --

10 Q I don't mean to interrupt you, but what
11 exactly did your detail entail?

12 A I was detailed in the civil division of the
13 United States Attorney's Office. I handled trials
14 and other procedural matters that came up before that
15 office. I handled a number of special counsel cases
16 that were there but anything else that the U.S.
17 Attorney's office assigned to me.

18 In 1984, I think October of 1984, I went to
19 work for the Department of Justice civil division,
20 commercial litigation branch. In 1990 I came to work
21 for the Treasury Department in my present position.

22 Q And where did you attend college?

1 A University of Nottingham in England.

2 MR. PORTNOY: I'm sorry, sir, I missed your
3 statement as to when you began your present
4 position.

5 THE WITNESS: August of 1990.

6 MR. PORTNOY: Thank you.

7 BY MR. O'CALLAGHAN:

8 Q Mr. McHale, are you aware of the
9 committee's document request to the Department of
10 Treasury in connection with this matter?

11 MS. STERGIS: Of what date?

12 BY MR. O'CALLAGHAN:

13 Q I guess there were a number of them. Are
14 you aware of any of the document requests in
15 connection with this matter?

16 A Yes.

17 Q And with respect to all the document
18 requests, did you search for responsive documents,
19 notes, reports, memoranda?

20 MS. STERGIS: Do you want to break it down
21 by time period?

22 MR. O'CALLAGHAN: Unfortunately I don't

1 have the dates with me.

2 BY MR. O'CALLAGHAN:

3 Q Are you aware of the dates of the different
4 requests?

5 A Of all the document requests that I'm aware
6 of, I have searched my office, yes.

7 Q Have all documents that were responsive to
8 the requests that you're aware of been produced?

9 A I produced from my office to the team of
10 Treasury lawyers -- may I ask a question for
11 clarification. Are we only talking about document
12 requests responsive to Senate Resolution 120?

13 Q Correct.

14 A With regard to Senate Resolution 120, I
15 searched my office and produced any documents that
16 were responsive to those requests to the team of
17 lawyers at Treasury who were handling document
18 production. I do not know what documents they
19 produced.

20 Q And did you search for documents outside of
21 your office as well?

22 A Not outside of my suite of offices, no.

1 MR. PORTNOY: Off the record.

2 (Discussion off the record.)

3 MR. O'CALLAGHAN: Back on the record.

4 MS. STERGIS: Do you mean documents that
5 would have been authored by him or by others?

6 BY MR. O'CALLAGHAN:

7 Q Documents responsive to the request that
8 you're aware of.

9 A With regard to the document requests from
10 the committee that I know of with regard to Senate
11 Resolution 120, I searched my office and a couple of
12 other file cabinets outside of my office in my suite
13 of offices where I believe that responsive documents
14 might be located.

15 Q Were there any documents responsive to
16 responses that you're aware of that were located
17 outside of your office or the filing cabinets that
18 you inspected?

19 A My understanding is that there were other
20 documents that were responsive to the requests that
21 were produced that were outside of my office, yes.

22 Q Any within your possession --

16

1 A No.

2 Q -- custody or control?

3 A No.

4 Q Do you maintain any files at home?

5 A No, not of work papers.

6 Q Have you spoken with anyone other than your
7 counsel prior to this deposition?

8 A Yes.

9 Q Who have you spoken to?

10 A When?

11 Q Prior to the deposition, with regard to
12 this deposition or the subject matter.

13 MS. STERGIS: Do you want to break down the
14 question? It's compound.

15 BY MR. O'CALLAGHAN:

16 Q Sure. With regard to -- let me rephrase
17 the question.

18 Have you spoken with anyone other than
19 counsel with regard to your deposition here today?

20 A Yes.

21 Q Who have you spoken to?

22 A Other than counsel --

1 (Witness conferred with counsel.)

2 MS. STERGIS: Mr. McHale is in the general
3 counsel's office of Treasury. Do you mean other than
4 me and Mr. Buckles?

5 BY MR. O'CALLAGHAN:

6 Q Other than counsel that's representing you
7 here today.

8 A Edward Knight, Neal Wolin.

9 Q Could you spell the second name?

10 A W-o-l-i-n. Kenneth Schmalzbach,
11 S-c-h-m-a-l-z-b-a-c-h. Ms. Kaplan, whose first name
12 I forgot.

13 MS. STERGIS: Lenore.

14 THE WITNESS: Lenore Kaplan. Mark
15 Hingston, H-i-n-g-s-t-o-n, Ann Marie McGuire, David
16 Dougherty, Peter Rittling, Francine Kerner. I talked
17 to a lot of people about this deposition. I'm
18 actually not sure. That is certainly not an
19 exhaustive list. My wife, my sister, a very -- more
20 people than that. That is not an inclusive list.
21 It's all I can think of at the moment, but I'm sure
22 there's more people. Bob McNamara.

1 BY MR. O'CALLAGHAN:

2 Q Are those all people employed at the
3 Department of Treasury that you spoke with?

4 A Except for my wife and sister.

5 Q Were there other employees at the
6 Department of Treasury that you spoke with?

7 A Yes.

8 Q Do you recall their names?

9 A Debra Diener.

10 Q How do you spell her last name?

11 A D-i-e-n-e-r. I'm sure there are other
12 people. I can't recall them right now.

13 Q What were the substance of discussions that
14 you had with Bob McNamara?

15 A We discussed the fact that I was going to
16 be deposed, the fact originally that he was not,
17 although I understand he's now been asked to be a
18 witness. Subsequently, we talked about the fact that
19 he was going to be a witness. I'm not sure. In the
20 course of preparing for the deposition, I may have
21 asked him some questions about the documents I
22 reviewed.

1 Q Do you recall which documents and what the
2 questions were?

3 A No, I do not.

4 Q When did these discussions take place?

5 A Sometime in the past, since I knew -- since
6 it's in connection with this deposition, sometime
7 since I was notified of the deposition.

8 Q What were the discussions you had with
9 Francine Kerner?

10 A I believe it was the same as with Bob, the
11 fact that I was going to be deposed, the fact that
12 she was going to be deposed and some questions again
13 about -- I reviewed a lot of the documents that were
14 going to be -- that I was told were produced and I
15 had questions about some of the documents.
16 Ms. Kerner had some questions about some of the
17 documents and she asked me some questions.

18 Q What were the specific questions that you
19 had with regard to documents?

20 A I don't remember all of them. One of them
21 I remember concerned an E-mail Kenneth Schmalzbach
22 wrote. She asked me if I had a copy of it. She

1 recalled the E-mail and asked if I had seen a copy of
2 it.

3 Q What did the E-mail -- what subject did the
4 E-mail deal with?

5 A It was a late July E-mail that had to do
6 with the conversation that Ken had with Francine
7 Kerner, July 1994.

8 Q What were the specific contents of the
9 E-mail?

10 A I can't be specific. It had to do with the
11 IG transcripts and something about Ellen Kulka,
12 general counsel of the RTC, and her position with
13 regard to redactions to the transcripts.

14 Q Was this E-mail produced to the special
15 committee?

16 A I do not know. You'll have to ask the
17 lawyers who produced it.

18 Q What specifically did the E-mail say about
19 the IG transcripts?

20 A I think I've told you probably all I can
21 remember on the specifics of it.

22 Q What other questions were raised during

1 that discussion?

2 A We talked about the order of witnesses, we
3 talked about -- again, the first time I spoke to her
4 we talked about the fact that Ed Knight and Bob
5 McNamara were not on the list of witnesses. We then
6 subsequently talked briefly about the fact that --
7 one of us, I can't remember who called who, but one
8 of us called the other to say that they had been
9 identified as witnesses by the committee.

10 I know we had other discussions. I don't
11 recall them. I know we talked about other things
12 because the conversations were not one-minute
13 conversations, but I'm having a little trouble
14 pulling it back.

15 Q Did you have any discussions about any
16 other documents?

17 A I believe so.

18 Q What documents did you discuss?

19 A We talked about some newspaper articles
20 that had appeared in May of this year and also during
21 1994.

22 Q What was the discussion regarding the

1 newspaper articles?

2 A Francine reminded me that there had been
3 some newspaper articles in May or April of 1995
4 concerning in part the transmission of --
5 transmission, I believe, of the transcripts to the
6 White House. I had forgotten about those articles.

7 We discussed briefly a review of newspaper
8 articles that I had made at some point or that had
9 been made by me and by others for me concerning the
10 subject matter -- well, actually concerning the last
11 year's Whitewater investigation generally, the
12 Treasury White House contacts and newspaper articles
13 about the Whitewater criminal referrals.

14 Q Did you have any discussion about any other
15 documents other than newspaper articles?

16 A Well, obviously in our discussions,
17 transcripts were discussed because -- and I assume
18 those transcripts have been produced, so I assume
19 those are within the documents because that was the
20 subject matter which these depositions are about. I
21 believe the answer to your question is yes, but I do
22 not recall specifics.

1 Q Don't recall the specifics, okay. And
2 these discussions took place within the last two
3 weeks?

4 A Uh-huh. I've been talking to Francine off
5 and on for the last year or more, actually. I've
6 known Francine for about three years, so it's kind of
7 hard for me to time frame conversations with
8 Ms. Kerner.

9 Q With regard to Ed Knight, what discussions
10 did you have with Mr. Knight?

11 A We discussed again the fact that I was
12 going to be a witness, when it was scheduled.
13 Subsequently we discussed the fact that he was going
14 to be a witness. He asked me about one document,
15 which was a memorandum he had sent to the deputy
16 Inspector General in late July 1994.

17 Q What did that memorandum deal with?

18 A It dealt with a request that the deputy
19 Inspector General had received from the Senate
20 committee for copies of the IG's transcripts of the
21 IG's interviews.

22 Q Did you have any other discussions with

1 Mr. Knight?

2 A I had two or three discussions with
3 Mr. Knight about the fact that I was going to be a
4 witness, he was not, he was going to be a witness,
5 when I was scheduled for it, that kind of
6 conversation. Aside from that, the one conversation
7 about this memorandum, no.

8 Q Did you discuss any other documents in
9 connection with this deposition?

10 A With who?

11 Q With Mr. Knight.

12 A Any other documents?

13 Q Correct.

14 A No, I don't believe so.

15 Q What are the discussions you had with Peter
16 Rittling?

17 A Peter works with me. I talk to Peter all
18 the time. He's one of my staff members. Concerning
19 what?

20 Q Concerning what your testimony would be
21 here today.

22 MS. STERGIS: I didn't understand that to

1 be the pending question. Objection.

2 BY MR. O'CALLAGHAN:

3 Q That's fine. Did you have any discussions
4 regarding what your testimony would be here today?

5 A I had asked Peter to do a nexus search for
6 me, which he did, in connection with my testimony
7 here today. Mr. Rittling is, I believe, one of
8 Mr. Buckles' team of attorneys who is reviewing the
9 documents and gathering the documents. If I had --
10 so I believe I discussed with Mr. Rittling documents
11 and I asked him where documents were, particular
12 documents were, I think. I think it was with
13 Mr. Rittling that I had these conversations. Again,
14 I talked about the fact that I was going to be a
15 witness.

16 Q Did you have any conversations -- excuse
17 me.

18 What conversations did you have with
19 Mr. Schmalzbach regarding this deposition?

20 A I work for Mr. Schmalzbach, he is my
21 immediate supervisor, therefore, I have daily
22 conversations, multiple daily conversations with

1 Mr. Schmalzbach on a wide range of subjects. We
2 discussed the scheduling of the deposition, who was
3 and who was not called as a witness. We discussed
4 who our lawyers were going to be. We discussed a May
5 1995, April-May 1995 newspaper article. We discussed
6 potential for -- of any claims of executive
7 privilege. We discussed whether he had reviewed a
8 letter that I had written on July 23 of 1994. I'm
9 sure we had further discussions. That's what I can
10 recall at the moment.

11 MR. BUCKLES: I wonder if we might break
12 for just a second so I could ask Mr. McHale a
13 question.

14 MR. O'CALLAGHAN: Sure.

15 (Discussion off the record.)

16 MR. O'CALLAGHAN: Back on the record.

17 BY MR. O'CALLAGHAN:

18 Q Before we went off the record, Mr. McHale,
19 you were discussing conversations you had with
20 Mr. Schmalzbach with regard to the deposition today.

21 A I think I just said that I'm sure I had
22 additional conversations with Mr. Schmalzbach. As I

1 said, I talk to him many times a day. Oh, at one
2 point I talked to him about the fact that the
3 document team had just brought up another group of
4 documents for him to review. He had already left for
5 the day and I suggested that -- actually, I left a
6 message with his wife that he might want to come back
7 and look at those documents. It was the night before
8 his deposition was scheduled earlier this week.

9 And then subsequently I talked to him about
10 the fact that he might want to go down and look at
11 those documents. And I know I talked about other
12 things with him, but I do not actually recall the
13 specifics.

14 Q Do you recall having discussions with him
15 about any other specific documents other than the
16 July 23 letter?

17 A And the pile he should go back and look
18 at?

19 Q Correct. I mean, you also discussed
20 newspaper articles, but other than that.

21 A There was a chronology of events which I
22 saw in the documents, in the documents I reviewed

1 that I did not know who had prepared. I asked him
2 who had prepared it.

3 Q Was that chronology prepared in connection
4 with these depositions?

5 A No.

6 Q Any other documents that were discussed?

7 A No. Possibly, but I don't recall.

8 Q Did either of you discuss with each other
9 what the substance of your testimony would be at the
10 depositions?

11 A Only in most general terms.

12 Q Have you discussed the testimony of anyone
13 who has been deposed here in connection with the
14 resolution, what their testimony was?

15 MS. STERGIS: Excuse me. Could you
16 identify who has been deposed to date?

17 MR. O'CALLAGHAN: I'm just asking anyone he
18 knows who has testified, if he has spoken with
19 anyone.

20 THE WITNESS: Only that I understand -- the
21 only discussion I have had is one in which I was told
22 Bob Cesca's deposition lasted about 7-1/2 hours.

1 BY MR. O'CALLAGHAN:

2 Q Who did you have that conversation with?

3 A I don't recall. Possibly Ms. Stergis.

4 Q But you didn't actually speak with
5 Mr. Cesca?

6 A No.

7 Q I'm going to move to some more general
8 areas. Could you describe to me how the Office of
9 General Counsel at Department of Treasury is
10 structured?

11 A General counsel is the head of the Office
12 of General Counsel. He's also the head of the legal
13 division, which consists of almost all attorneys of
14 the Department of Treasury. Under the general
15 counsel is the deputy general counsel. There are
16 five assistant general counsels, one of whom is the
17 chief counsel of the Internal Revenue Service. The
18 other four are the assistant general counsel for
19 international affairs, assistant general counsel for
20 enforcement, assistant general counsel for banking
21 and finance and the assistant general counsel for
22 general law and ethics. There's also an associate

30

1 general counsel for legislation, litigation and
2 regulation.

3 Each of those general counsels have
4 staffs. Each of those assistant general counsels
5 have staffs and each of them has a deputy and each
6 bureau of the Department of the Treasury has a chief
7 counsel and staff.

8 Q Between March and August of 1994, what was
9 your position?

10 A Deputy assistant general counsel. At the
11 time, my office was called administrative and general
12 law. The same position I hold now. Just the title
13 of the office changed.

14 Q You say the name of the office has changed?

15 A In December of 1994.

16 Q But is it basically the same office?

17 A It's exactly the same office.

18 Q Who did you report to during that time
19 period?

20 A Kenneth Schmalzbach.

21 Q What was his title?

22 A Assistant general counsel, administrative

- 1 general law.
- 2 Q Who did Mr. Schmalzbach report to?
- 3 A Who was the time frame again?
- 4 Q March through August 1994.
- 5 A Dennis Foreman.
- 6 Q What was Mr. Foreman's title?
- 7 A Deputy general counsel.
- 8 Q Who did Mr. Foreman report to?
- 9 A Jean Hanson.
- 10 Q Was Jean Hanson a general counsel?
- 11 A She was the general counsel, yes.
- 12 Q A or the?
- 13 A She was the general counsel. There was
- 14 only one.
- 15 Q That's what I thought you said. During
- 16 this time period, did you have anyone that reported
- 17 to you?
- 18 A Yes.
- 19 Q Who reported to you?
- 20 A There were a number of staff attorneys. Do
- 21 you want their names?
- 22 Q Yes, please.

- 1 A Randolph Sim.
- 2 Q How do you spell the last name?
- 3 A S-i-m. Mark Hingston, H-i-n-g-s-t-o-n,
- 4 Rochelle Granat, G-r-a-n-a-t, Ann Marie McGuire,
- 5 Henry Booth, David Dougherty, Peter Rittling and
- 6 William Murphy. Then there are -- there is an ethics
- 7 specialist, Mary Grace Tillotson, T-i-l-l-o-t-s-o-n,
- 8 and three secretaries, Jean Long, Bernetta Smith and
- 9 Liza Mosquera, M-o-s-q-u-e-r-a. I think that's a
- 10 complete list.
- 11 Q What matters does the counsel's office of
- 12 administrative and general law deal with?
- 13 A It's now called general law and ethics, but
- 14 we dealt with the same subject matter throughout.
- 15 Q Why don't we deal with it during the time
- 16 period March through August of '94.
- 17 A What subject matter?
- 18 Q Correct. What areas were your
- 19 responsibilities?
- 20 A Our clients, which is how we generally
- 21 define our responsibilities, our principal client
- 22 aside from the Secretary and Deputy Secretary of the

1 Treasury would be the Assistant Secretary for
2 general -- for management, the Treasury of the United
3 States, the Assistant Secretary for public affairs
4 and the Executive Secretary.

5 Our subject areas, which actually crossed
6 client lines somewhat, include personnel law, EEO
7 law, labor law, disclosure law, fiscal and
8 appropriations law, contracts, procurements, ethics,
9 and anything that doesn't fall into any other
10 category, that's not international affairs, banking
11 and finance or enforcement.

12 Q Do you kind of bat cleanup?

13 A Yes.

14 Q Does the Office of General Counsel have any
15 oversight responsibilities with respect to the
16 Treasury' Inspector General's office?

17 A Does who?

18 Q Office of General Counsel.

19 A For Treasury's Inspector General's office?

20 Q Correct.

21 A Not for the Inspector General, no.

22 Q Any aspect of the Inspector General's

1 office?

2 A There is a legal counsel or counsel to the
3 Inspector General who reports to the deputy general
4 counsel.

5 Q Who is that currently?

6 A Lori Vassar.

7 Q How about for the time period March through
8 August 1994?

9 A Francine Kerner.

10 Q What type of oversight does the Office of
11 General Counsel have over the legal counsel to
12 Inspector General?

13 A Counsel of the Inspector General reports to
14 the deputy general counsel.

15 MS. STERGIS: Are you talking about the
16 March-August '94 time frame?

17 BY MR. O'CALLAGHAN:

18 Q Specifically March to August 1994 time
19 frame.

20 A During that time frame, there was an
21 agreement between the Inspector General and the
22 general counsel which removed the counsel to the

1 Inspector General from the oversight of the deputy
2 general counsel for any matters related to, I guess
3 we could generally call it Whitewater or the
4 Inspector General's investigation into the Treasury
5 White House contacts.

6 Q And when was that effective?

7 A I believe it was sometime in June of 1994
8 that that agreement was documented. I don't know
9 whether it was in place before then.

10 Q Did the counsel to the Inspector General
11 during that time period report to the deputy general
12 counsel for all other matters?

13 A Yes.

14 Q During the time period March through August
15 '94, what type of contact did the office of
16 administrative and general law have with the
17 Inspector General's office? You can start with the
18 general description, too.

19 A We work with the Inspector General's office
20 on a wide range of issues, access issues, any issues
21 that come up in the management context, audits that
22 they do.

1 Q I'm sorry, management context --

2 A My client is the Assistant Secretary for
3 management. Obviously that involves a wide range of
4 issues that the Inspector General looks at. They do
5 many audits and investigations that in some way
6 involve my clients.

7 At that time they were also doing -- I
8 believe they were still doing an audit of part of the
9 ethics program, the confidential financial disclosure
10 system. In part, that's the responsibility of my
11 office. We were having contacts with them on that.
12 They were doing several other investigations
13 involving both bureau and departmental employees and
14 other matters that we would have had contact with
15 them.

16 I probably deal with the inspector
17 general's office one or more times a week, so there
18 were a lot of matters.

19 Q Is that true for the time period March to
20 August 1994?

21 A That's the time period you asked me about.

22 Q I'm sorry, you spoke in the present tense.

1 A That's true for the present tense as well.

2 Q Thank you. During the time period we were
3 talking about, did your office have any contact with
4 the Office of Inspector General with regard to any
5 Whitewater matters?

6 A Yes.

7 Q What were the contacts between the two
8 offices with regard to Whitewater matters?

9 MS. STERGIS: Can you be a little more
10 specific?

11 MR. O'CALLAGHAN: It's meant to elicit a
12 general response.

13 THE WITNESS: We had contacts concerning
14 their support for the Office of Government Ethics in
15 the conduct of their investigation in support of the
16 Office of Government Ethics.

17 BY MR. O'CALLAGHAN:

18 Q You said you had contacts with regard to
19 the support of the Office of Government Ethics. Did
20 you provide them with any services or what was your
21 role with regard to their support of Office of
22 Government Ethics?

1 A During March, the Secretary had requested a
2 review by the Office of Government Ethics for the
3 Treasury White House contacts. The Office of
4 Government Ethics had essentially initially responded
5 that they did not have the resources to conduct that
6 investigation. They -- the conversation in which I
7 was present, I believe, with Jane Ley, I believe by
8 telephone; they indicated that they would be
9 contacting the Office of Inspector General at
10 Treasury and RTC to assist them.

11 Following that telephone call, I had a
12 brief conversation with Francine Kerner, I believe,
13 or someone in the inspector general's office. It may
14 have been a staff member on her staff, essentially
15 giving them the heads-up that they would be getting a
16 call from the Office of Government Ethics and talking
17 a little bit, I think there was some discussion about
18 what that -- why was it OGE that would be calling the
19 IG.

20 Q How did you get involved with the call with
21 Jane Ley?

22 A Well, remember, the ethics is our area and

1 one of the issues -- we deal with the Office of
2 Government Ethics frequently on a very wide range of
3 issues. We know the attorneys over there, we know
4 the people over there, and normally almost any
5 contact with the Office of Government Ethics would be
6 handled by me office.

7 Q And were you asked to assist the Office of
8 Government Ethics?

9 A In what?

10 Q They were asked to conduct a review by the
11 Secretary; is that correct?

12 A Yes.

13 Q Were you asked by the Office of Government
14 Ethics to assist them in conducting their review?
15 When I say "you," I mean your office.

16 A My office, yes, we provided them -- we
17 provided to the Inspector General at the request of
18 the Office of Government Ethics a memorandum of legal
19 opinion on the work of Treasury employees in
20 connection with the Resolution Trust Corporation. We
21 provided them some copies of regulations. I think we
22 talked about scheduling. We talked --

40

1 Q I'm sorry, scheduling with regard to what?

2 A Generally when they would get their advice
3 back to the Secretary. Secretary had asked for their
4 advice and we talked to them about when they would
5 get their advice back.

6 Q Scheduling of the timing of the analysis
7 that they requested?

8 A When they would get their advice back. We
9 were trying to find out when they would get their
10 advice back to the Secretary. We might have provided
11 them with some additional assistance. I'm not sure
12 if -- what I'm not sure about is whether we provided
13 them with copies of documents we had produced or
14 whether they were provided to the inspector general,
15 who provided them to them, but we may have done that.

16 Q With regard to the legal opinion that was
17 provided them, who prepared that opinion?

18 A It was signed by Ken Schmalzbach. I know
19 he worked on it. I reviewed it. I'm not sure if it
20 was also -- I believe, I'm fairly certain parts of it
21 would have been worked on by staff of the office, but
22 I'm not sure whom.

1 Q When was that produced?

2 A Produced to who?

3 Q Well, when was the product finished?

4 A There's a date on it. I think work started
5 on it sometime maybe June. It may have been finished
6 in June, it may have been July, of 1994. It may have
7 been earlier than that, but I don't think so.

8 Q What type of service does the Office of
9 Administrative and General Law, what type of services
10 did they provide the Office of the Secretary during
11 the time period March through August '94?

12 A All of our work is for the Secretary.

13 Q But any specific work for the Office of the
14 Secretary?

15 A Ethics advice. There isn't actually
16 something that easily is defined as the Office of the
17 Secretary, so I'm having a little trouble with that,
18 unless you're talking about the Secretary and his two
19 confidential Secretaries. The term is sort of --
20 sometimes, used to cover all the departmental
21 offices.

22 Then we changed the title from Office of

1 Secretary to departmental offices. It generally
2 would include -- I would include within the term
3 Office of Secretary the Chief of Staff, office of
4 Executive Secretary and some would also include the
5 Deputy Secretary. The term is a little hard for me
6 to --

7 Q I'll break it down.

8 What type of service did you provide to the
9 office of Executive Secretary during that time
10 period?

11 A They have a lot of disclosure law issues, a
12 lot of ethics issues, scheduling issues, should such
13 a matter be on the Secretary's schedule, et cetera,
14 is there any legal problem. Actually, the Office of
15 General Counsel reviews virtually all correspondence
16 to be signed by the Secretary or the Deputy Secretary
17 and that comes from Exec Sec, who track all that
18 correspondence, make sure that it's reviewed. And my
19 office reviews probably 80 to 90 percent of that
20 correspondence, so we do a lot of work for the
21 Secretary.

22 Q So how much contact would you say during

1 the time period you personally had with the office of
2 Executive Secretary?

3 A Quite a bit. Ed Knight was at that time
4 Executive Secretary.

5 Q Did you primarily deal with Ed Knight in
6 that office during that time period?

7 A No, I dealt with a number of people. I
8 dealt with Ed Knight, but I dealt with -- primarily
9 in the March-August time frame?

10 Q Correct.

11 A Probably half my contacts with that office
12 would be with Ed Knight, but I would deal with a lot
13 of other people as well.

14 Q Who else in that office did you deal with?

15 A I think at some time in this time frame
16 Neil Comstock became the Deputy Exec Sec. I would
17 have dealings with him. And then there is a number
18 of staff people who do document review and make
19 correspondence review and that sort of thing. I had
20 contact with them. I'm not sure when Neil started.

21 You asked me about contacts with Executive
22 Secretariat. The Secretary had asked Mr. Knight to

1 coordinate all matters with regard to the Treasury
2 White House contacts and the various investigations
3 going on into that. I'm not sure whether that was
4 within his role of Executive Secretariat or not, but
5 Mr. Knight was Executive Secretariat and I was
6 supporting him in that coordinating role.

7 Mr. Knight's title was Executive Secretary and senior
8 adviser to the Secretary, so he had sort of a wider
9 portfolio.

10 Q When you say he was asked to coordinate the
11 Treasury-White House contacts issued, what
12 specifically was his role with regard to that?

13 A Normally within the department, Cabinet
14 department, you would expect the general counsel or
15 deputy general counsel to take that role. In part,
16 the general counsel was -- general counsel was a
17 witness, deputy general counsel had provided ethics
18 advice in connection with the matters that were under
19 investigation and was likely that he would be a
20 witness; therefore, they were really to some extent
21 not available to provide the normal leadership that
22 they would provide.

1 Q At this time the general counsel is Jean
2 Hanson and deputy general counsel is Dennis Foreman;
3 is that right?

4 A Right, uh-huh, yes. Mr. Knight was asked
5 by the Secretary to work with career lawyers from the
6 general counsel's office to make sure that --
7 essentially oversee the department's various
8 responses to the various investigations, make sure we
9 were doing everything that needed to be done, got it
10 done properly, to be as fully responsive as possible.

11 Q Was that in connection with, for example, a
12 document production, scheduling of witnesses? What
13 exactly did that entail?

14 A We had a number of document requests from a
15 number of different groups, bodies. We had --

16 Q To simplify your testimony, if you could
17 just address his role with regard to the OGE analysis
18 and the investigations conducted by Treasury
19 inspector general's office and RTC inspector
20 general's office.

21 MR. PORTNOY: Mike, the witness is trying
22 to give a broader picture because he viewed his role

1 in connection with the OGE analysis as part of a
2 broader role.

3 THE WITNESS: That's right. I mean, we had
4 at least four investigations going on in overlapping
5 periods of time.

6 BY MR. O'CALLAGHAN:

7 Q There were specific services that you
8 provide in connection with the OGE report; is that
9 right?

10 A Well, many of those services were provided
11 in connection with the other investigations as well.
12 It's not -- doesn't neatly parse out.

13 For example, the documents that we produced
14 to the Inspector General were essentially the
15 documents we had previously produced to the
16 independent counsel, and then the inspector general
17 had additional document requests and then the
18 independent counsel had additional document requests
19 and the Senate had different document requests and
20 they overlap, so did the House, and they overlapped.

21 And the witnesses were all being
22 interviewed by different groups at different times.

1 Different requests for opinions might be applicable
2 to multiple or different -- a legal issue might arise
3 in one context, but it would be just as applicable in
4 another context.

5 So it is not easy to say, I did this work
6 for the OGE, inspector general review, I did this
7 work for the Fiske review, this for the Senate
8 review. It doesn't parse out that way.

9 MS. STERGIS: Could I have just a second?

10 MR. O'CALLAGHAN: Certainly.

11 (Discussion off the record.)

12 BY MR. O'CALLAGHAN:

13 Q We were discussing Mr. Knight's role in
14 coordinating, I guess, the efforts to deal with
15 issues relating to the White House Treasury contacts
16 that were being looked at by various government
17 entities, I guess is the best way to describe it. I
18 asked you what his specific responsibilities were
19 with regard to that. You were talking about
20 coordination of document production?

21 A Document production and the department's
22 response generally to the investigation and any other

1 matters that we come up with in the context of that,
2 basically.

3 Q How about with regard to scheduling of
4 witnesses for -- and this you can I think
5 specifically delineate with regard to the Treasury IG
6 and RTC IG investigation.

7 A For the most part, that scheduling was done
8 by the IGs. Mr. Knight was involved in scheduling of
9 the Secretary's interview. I don't know of any other
10 involvement he had with specific scheduling of the
11 specific witnesses, aside from the time frame in
12 which we hoped that this would all be completed.

13 Q How about, anyone from your office involved
14 in scheduling matters?

15 A Yes.

16 Q Who is involved in that?

17 A I believe we had some involvement in the
18 scheduling of Dennis Foreman's IG interview. We were
19 providing representation, support, legal support
20 services to Mr. Foreman. I don't recall any others.

21 Q Did you have any contact with anyone in the
22 IG's office or anyone working with the IG's office

1 with regard to scheduling, you personally?

2 A I believe I had some discussions with
3 regard to the scheduling of the Secretary's
4 deposition by the IG, but it may have been in
5 connection with someone else's discussions with the
6 Secretary, some other group's discussions with the
7 Secretary. I believe it was with the IG. That would
8 be the only thing that I would be personally involved
9 in.

10 Q What were those discussions?

11 A Just scheduling, just basically trying to
12 fit it into everybody's schedules, working around.
13 I'm having difficulty separating out what discussions
14 I might have had about the Secretary's interview with
15 the IG versus the Secretary's interview with the
16 Senate staff, actually, just -- I can't quite sort
17 that out. They occurred -- a lot of events were very
18 much telescoped in the latter part of July.

19 Q Do you recall if you had any discussions
20 with Francine Kerner with regard to scheduling of
21 interviews?

22 A I'm fairly certain my discussions

50

1 concerning scheduling of the Secretary's interview
2 would have been probably with Francine Kerner. She
3 was basically -- she was the legal counsel, basically
4 my contact in the inspector general's office. She's
5 my counterpart. I may have talked to someone on her
6 staff.

7 MS. STERGIS: Could I ask for a
8 clarification? Do you mean the general subject of
9 when witnesses as a whole would be scheduled or a
10 particular witness?

11 MR. O'CALLAGHAN: Just the general
12 schedule.

13 THE WITNESS: You're talking about witness
14 interviews; right?

15 BY MR. O'CALLAGHAN:

16 Q Correct. Do you recall who you might have
17 spoken with on her staff?

18 A She has an attorney who worked for her
19 named Richard Doery, D-o-e-r-y, but she has two other
20 part-time attorneys. Most likely the conversation
21 would be with Ms. Kerner.

22 Q Did you ever receive a schedule for one

1 witness who was going to be deposed with regard to
2 the Treasury IG and RTC IG investigation?

3 MS. STERGIS: Do you mean a general
4 schedule of the plan of organization of who would go
5 when?

6 MR. O'CALLAGHAN: Correct.

7 THE WITNESS: I was aware of such a
8 schedule. I don't think I've ever seen such a
9 schedule.

10 BY MR. O'CALLAGHAN:

11 Q How were you aware of such a schedule?

12 A I was in Ireland from July 1 to July 18,
13 1994. During that time frame I would speak usually
14 every day with Ken Schmalzbach, and Ken and I
15 discussed generally the IG investigation and
16 whether -- what the likelihood was that we would have
17 a report prior to the Secretary's testimony or prior
18 to the hearings.

19 And in those conversation we talked
20 about -- I know we talked about who had been
21 interviewed, and I know we also discussed who was
22 going to be interviewed by the IGs in terms of

1 timing.

2 Q Did he have a schedule for the witnesses
3 that were going to be deposed by the IG offices?

4 A That sort of suggests a formal document
5 that listed each witness with times. I think he had
6 some sense of who they had interviewed and who they
7 were probably going to be interviewing. I don't
8 know -- I'm not aware that he had any kind of
9 complete schedule as such, and I think it was fairly
10 flexible. I think it shifted around a lot.

11 Q So you don't know if he had a specific
12 document that listed the schedule for the witnesses?

13 A No, I'm not aware of such a document.

14 Q You stated that you were aware that such a
15 document existed?

16 A No, I said I'm not aware of such a
17 document.

18 Q I mean not specifically with regard to
19 Mr. Schmalzbach. I asked you if you had seen the
20 schedule of witnesses, and I believe you?

21 A You don't have a better copy of the
22 handwriting on here, do you?

1 Q Unfortunately I don't. I think it had been
2 copied a couple times by the time it got to us. My
3 questions are going to be centered on the text of the
4 document.

5 MS. STERGIS: I would like another minute
6 because I haven't seen this document before.

7 MR. O'CALLAGHAN: Certainly.

8 MR. PORTNOY: Can we take a 30-second break
9 while they review the document?

10 MR. O'CALLAGHAN: Sure.

11 (Recess.)

12 MR. O'CALLAGHAN: Do you have a question,
13 Counsel?

14 MS. STERGIS: Yes. I have not seen this
15 document previously. I don't believe it's a document
16 produced by Treasury general counsel's office, and it
17 doesn't appear to relate to any matters within the
18 scope of the resolution subsection that you've cited,
19 subsection E, and I would ask you to articulate what
20 grounds you see for any conduct of examination on
21 this document.

22 MR. O'CALLAGHAN: Well, the grounds were I

1 don't think the contents of the documents are clear
2 as to what it relates to, and I was going to -- just
3 whether or not Mr. McHale had seen the document,
4 whether he was aware of the substance of the document
5 and whether or not it did relate to matters covered
6 by the resolution.

7 There was no representation that this was
8 produced by Treasury general counsel or otherwise.
9 It was just a document that was presented and I want
10 to ask him some questions about it.

11 MR. BUCKLES: I would suggest on the face
12 of it it appears not to be relevant here. It has to
13 do, it appears to me, exclusively with documents and
14 not the OGE report and related transcripts.

15 MR. O'CALLAGHAN: I'll ask a couple of
16 questions. If you object to the questions, please do
17 so. I think that would be probably the best way to
18 also conduct the rest of the deposition, that way
19 instead of trying to anticipate what I'm using the
20 documents for, you can voice your objections if you
21 feel it's appropriate.

22 BY MR. O'CALLAGHAN:

1 Q The first question I'll ask you,
2 Mr. McHale, is have you ever seen this document
3 before?

4 A No, not that I recall.

5 Q After having reviewed the document, are you
6 familiar with the subject matter that's covered in
7 the document?

8 A Part of the document is illegible so --

9 Q With regard to the typewritten text.

0 A Okay. Can I ask you if this is the
1 complete document? I notice it's separated from
2 another page.

3 Q Well, just with regard to the information
4 that's contained on this page.

5 A Could you restate your question?

6 Q Are you familiar with the subject matter
7 that is addressed in the document?

8 A I believe so.

9 Q Is the subject matter that is contained in
0 the document related to any kind of preparation or
1 documents that involved the preparation of the OGE
2 analysis?

1 A It doesn't relate to the preparation of the
2 OGE analysis. It relates to documents -- as it says,
3 something to do with documents that Treasury gave to
4 Fiske. The documents that Treasury gave to Fiske
5 were the documents that Treasury gave to the
6 Inspector General that Inspector General gave
7 presumably to the Office of Government Ethics.
8 That's probably the best I can answer your question.

9 Q And I --

0 A This doesn't appear to me to relate to the
1 IG or the OGE investigation, other than through that
2 somewhat convoluted path.

3 Q The question relates to the document
4 request that was made by the White House during the
5 time period when the Inspector General's general
6 offices were conducting investigation in connection
7 with the OGE analysis.

8 MS. STERGIS: Objection. There's no date
9 on the document and it's not --

0 MR. O'CALLAGHAN: I'm just asking him if he
1 knows.

2 THE WITNESS: I don't believe so, but it's

1 somewhat -- I don't believe so. I believe it's
2 earlier than that.

3 BY MR. O'CALLAGHAN:

4 Q Thank you. Mr. McHale, I would like to
5 show you a document which consists of a number of
6 different pages. And I believe for some reason or
7 other during either -- either it was produced like
8 this or during the course of reproducing it to the
9 committee by the clerk's office, a number of the
10 Bates stamps have disappeared off the front of the
11 document, and I think it might have happened during
12 the clerk's reproduction of the document. It looks
13 like the toner was down when the committee made its
14 copy. The Bates are basically indecipherable.

15 For purposes of identification, let me just
16 describe the document and then if we need to amend
17 the transcript later with regard to the Bates stamps,
18 we will do that. The document appears to be copies
19 of a personal calendar book, beginning on February 20
20 through August 6 for the year 1994.

21 MR. PORTNOY: Is that inclusive or with
22 gaps?

1 MR. O'CALLAGHAN: I believe it's
2 inclusive. I think it covers the entire time
3 period.

4 BY MR. O'CALLAGHAN:

5 Q Mr. McHale, have you seen this document
6 before?

7 (Witness reviewed the document.)

8 A Yes.

9 Q And when did you first see it?

10 A April or May of this year, '95.

11 Q How did this document come to your
12 attention?

13 A I prepared it.

14 Q Do you recognize any of the handwriting
15 that appears?

16 A It's my handwriting.

17 Q When were the handwritten notations made on
18 this document?

19 A April or May of this year.

20 Q And for what purpose was this document
21 prepared?

22 A It was in connection with another

1 investigation into this matter.

2 Q And did you use anything to assist you in
3 making the notations that appear on this document?

4 A Yes.

5 Q What materials did you use to assist you?

6 A Documents that had been collected and
7 produced, I believe.

8 Q In connection with the investigation?

9 A In connection with last year's hearings in
0 part, my recollection and I believe I probably talked
1 to Ken Schmalzbach and others in preparing this
2 document.

3 Q When you say you talked to Ken Schmalzbach
4 and others, did you talk to them with regard to their
5 recollections?

6 A About dates, yes.

7 Q Did you speak with Francine Kerner?

8 A I may have.

9 Q And Ed Knight?

10 A Probably not.

11 Q Bob McNamara?

12 A Probably.

1 Q I would like to direct your attention to
2 the portion of the document in May, beginning with
3 May 8. I would like to direct your attention to the
4 entry on May 12. If you could read that back for me
5 and tell me what it refers to.

6 A "Date of Klein/ESK memo."

7 Q What does that refer to?

8 A It refers to a memorandum from Joel Klein,
9 who I believe was the deputy counsel at the White
0 House, to Edward Knight, who was the executive
1 secretary, requesting access by certain members of
2 the White House counsel's staff to some of the
3 documents that we had previously produced to
4 Mr. Fiske.

5 Q And did the memo state the purpose for the
6 request?

7 A Yes.

8 Q What was that?

9 MS. STERGIS: Objection. That's beyond the
0 scope of this inquiry.

1 MR. O'CALLAGHAN: I'm unable to determine
2 that unless I have the witness answer the question.

1 THE WITNESS: Do you want me to answer?
2 MS. STERGIS: Could the reporter read back
3 the question.
4 (The reporter read the record as requested.)
5 MR. PORTNOY: Could the question be
6 rephrased as to did the request pertain to this
7 inquiry?
8 MR. O'CALLAGHAN: No, I don't think it can
9 be.
10 Are you objecting to the question as it
11 stands right now?
12 MS. STERGIS: Yes, because it may call for
13 an answer beyond the scope of this inquiry.
14 MR. O'CALLAGHAN: Well, I'm going to
15 request that the witness answer the question anyway.
16 MS. STERGIS: Even if it calls for
17 something beyond the scope of the resolution?
18 MR. O'CALLAGHAN: Well, I'm unable to
19 determine whether it's beyond the scope of the
20 resolution.
21 MR. BUCKLES: Would it not be possible to
22 phrase -- again, the question, in the context of what

1 the resolution says --
2 MR. O'CALLAGHAN: Let me try to do that.
3 BY MR. O'CALLAGHAN:
4 Q Did the request deal with matters relating
5 to a White House-Treasury contact?
6 MS. STERGIS: Objection, that's not the
7 scope of (1)(b)(2)(e).
8 MR. BUCKLES: Mr. O'Callaghan, not trying
9 to be difficult --
10 MR. O'CALLAGHAN: I understand your
11 objection.
12 MR. BUCKLES: -- but the OGE and the IG
13 didn't start up until July 1, and we're talking about
14 requests and references to things that were happening
15 in May. I mean, that's why we're raising this.
16 MR. O'CALLAGHAN: I understand.
17 MR. BUCKLES: It appears that this is
18 talking about --
19 BY MR. O'CALLAGHAN:
20 Q Let me ask, when was the Treasury IG first
21 requesting to conduct an investigation into this
22 matter?

1 A March 4, 1994. I'm sorry, the Secretary
2 requested the Office of Government Ethics to conduct
3 an investigation on, I believe, March 3 or 4, 1994.
4 Sometime within a few days of that, I believe, the
5 Office of Government Ethics requested that the
6 Treasury IG assist them in that review.

7 Q At a certain time were they asked to put
8 the investigation in abeyance?

9 A Yes.

10 Q And when did that occur?

11 A Early March 1994, maybe March 10 or right
12 around there.

13 Q Who made that request?

14 A Robert Fiske.

15 Q And during that time period, were there any
16 discussions that went on regarding potential or
17 possible investigation that would occur after
18 Mr. Fiske gave the go-ahead?

19 A Yes, the Office of Government Ethics had
20 asked for the IG's support in their review for the
21 Secretary.

22 Q To your knowledge, were there any

1 discussions that occurred between Treasury IG's
2 office and RTC IG's office regarding upcoming
3 investigation into the matter?

4 A I have to assume there were. Not to my
5 knowledge.

6 Q Per your knowledge, did your office engage
7 in any discussions with any of the parties involved
8 in the investigation in anticipation of the
9 investigation?

0 A The Treasury IG's office.

1 Q What were those discussions?

2 A About scheduling and trying to get --
3 hoping or expressing our hope that we would get the
4 report prior to the start of the hearings. We also
5 at some point -- what was your time frame again?

6 Q Prior to the official initiation of the
7 investigation.

8 A Right. We also at some point in June made
9 the documents that we had made available to Mr. Fiske
0 available to the Treasury Inspector General.

1 Q When in June did that occur? Please feel
2 free to use the calendar to refresh your

1 recollection.

2 A It's not on the calendar. To the best of
3 my recollection, it would be somewhere probably the
4 week just before or after the week of June 13 or
5 maybe the week of June 13.

6 Q What was that document production done in
7 connection with?

8 A The IG's investigation -- the IG's
9 investigation in support of the Office of Government
10 Ethics review.

11 Q You said June 13?

12 A Just before or just after that, or that
13 week, in that period. There had been discussions
14 with the IG earlier in the process, maybe as early as
15 March, about getting access to Mr. Fiske's documents.

16 Q And who was involved in those discussions?

17 A I was.

18 Q And who in the IG's office?

19 A Francine Kerner.

20 Q Are you aware that a meeting occurred on
21 May 13 between Bob Cesca, Dennis Foreman, Kenneth
22 Schmalzbach and Francine Kerner with regard to

1 Whitewater?

2 A May 13?

3 Q Correct.

4 A Not that I recall. Considering I talked to
5 Ken frequently, I probably was aware of it at the
6 time. I do not recall it today. May 13, 1994;
7 right?

8 Q Correct, correct.

9 A Right.

10 Q I would like to direct your attention to
11 the next entry in the diary, which is May 14. Could
12 you read what that says and tell me what it refers
13 to?

14 A "Received Klein letter, began to show docs
15 Klein, Sherburne and Cheston."

16 Q What does that refer to?

17 MR. BUCKLES: I would like to raise an
18 objection again. I still don't see how anything
19 dealing with these documents and what was occurring
20 in May has anything to do with the report of OGE on
21 the 31st and the transcripts that didn't become --
22 come into existence until beginning in July.

1 BY MR. O'CALLAGHAN:

2 Q Does the entry on May 14 have anything to
3 do with the OGE report?

4 A No.

5 MR. O'CALLAGHAN: I wasn't trying to elicit
6 information outside the scope.

7 MR. BUCKLES: Okay.

8 BY MR. O'CALLAGHAN:

9 Q Mr. McHale, I would like to show you a
0 document which bears Bates stamp 11309 and 11310.
1 Take a moment to review that.

2 (Witness reviewed the document.)

3 A Do you have any better copy of the
4 handwriting at the top? You do, actually, very
5 slightly.

6 MS. STERGIS: Yours looks like it might be
7 a darker copy.

8 MR. O'CALLAGHAN: I don't think so. I
9 think that's the better copy. I'm not going to
0 address questions to that anyway.

1 (Witness reviewed the document.)

2 BY MR. O'CALLAGHAN:

1 Q Have you ever seen the document with Bates
2 stamps 11309 and 11310 before?

3 A Yes.

4 Q When did you see it?

5 A In connection with my preparation for this
6 deposition. It's possible I had seen it before in
7 connection with other matters, preparation for other
8 matters.

9 Q Do you know who prepared this document?

0 A No, I do not.

1 Q Other than preparing for interviews or
2 testimony, had you seen this document previously?

3 A It's possible.

4 Q Do you have any specific recollection?

5 A No.

6 Q Do you know which office produced this
7 document?

8 A Produced it to who -- or what, made it
9 or --

0 Q Created it would be a better term.

1 A No. I do not know for certain. It would
2 probably either be --

1 Q You don't need to speculate on that. Thank
2 you.

3 I'll show you another document, Bates
4 stamped 11344 and 11345. Again, I would like you to
5 review it. This one doesn't have any handwritten
6 notes on it. And this is --

7 MR. PORTNOY: They all came off in
8 production.

9 MR. O'CALLAGHAN: This is the way the
10 document was produced, if there's a question about
11 completeness of the document.

12 (Witness reviewed the document.)

13 BY MR. O'CALLAGHAN:

14 Q Actually, let me also give you 11309 and
15 11310. If you look at the second page, 11310, it
16 seems to contain the same text that appears at the
17 top of the first page of this document. That might
18 help put it in better context.

19 A That's the document you just showed me a
20 minute ago.

21 Q Correct, yes. If you look at the second
22 page of the first document.

1 Does this refresh your recollection as to
2 who created this document?

3 A I believe this document is sort of a to-do
4 list that I have seen before, these two documents,
5 and to the best of my recollection it would have been
6 prepared by Mr. Schmalzbach.

7 Q In connection with what? Was it in
8 connection with the OGE report?

9 A In part.

10 Q If we could use both documents as a
11 reference point, because they seem to be part of the
12 same overall product, could you identify the parts
13 that deal with --

14 A Starting on 11309, dealing with what?

15 Q I wasn't able to finish my question.
16 Dealing with either preparing for or assisting
17 Treasury IG's investigation or RTC IG's investigation
18 with relation to preparation or assisting OGE in
19 their analysis.

20 A It looks like almost all the material, if
21 not all the material, on 11309 except for the
22 handwritten material at the top is the response -- I

1 don't know what the handwritten material at the top
2 is, although one of the notes is "letter to OGE," but
3 I don't know what that says.

4 Q That's not your handwriting; correct?

5 A No. On 11310, the first two lines appear
6 to have some reference to the Inspector General. I'm
7 not sure what the next three specifically refer to.
8 They do not appear -- doesn't to me appear to be
9 responsive to our support of the RTC Treasury IG
10 investigation.

11 Q Do you recognize the handwriting that
12 appears on 11309 at the top left corner?

13 A No, I do not.

14 Q With regard to 11344, it begins where the
15 other one leaves off. I guess if you can identify
16 beginning at the first bullet point, "question for
17 Francine."

18 A Right. "Francine" would be Francine
19 Kerner. I would think that whole paragraph -- well,
20 the item number 1 in that paragraph would relate to
21 the -- to some extent to the Inspector General review
22 and by its context it doesn't seem to relate to

1 Treasury support for the IG review. Item 2 does not
2 relate to the IG review -- item 3 does not relate to
3 the IG review.

4 Q With regard to the item in that paragraph,
5 do --

6 A -- although all of it seems to be related
7 to questions for Francine, so it may have some
8 relation generally.

9 Q And that's why I'm hesitant to specifically
10 pigeonhole in reference to preparation for the IGs in
11 connection with the report. And that's why I'm
12 having trouble with the scope objections.

13 Would any of the information in there deal
14 with information that's related to that process?

15 MR. PORTNOY: What process?

16 MR. O'CALLAGHAN: The process of preparing
17 the OGE report.

18 THE WITNESS: As reflected in this
19 paragraph, one of the things that we had the
20 responsibility to do was to prepare the Secretary and
21 Treasury witnesses for Congressional hearings.
22 Because we as Treasury attorneys represent --

1 potentially represent the secretary, as we did, as
2 attorneys we would normally do a factual
3 investigation to find out what the facts are prior to
4 providing legal advice. Because of all of the
5 overlapping investigations ongoing, it had been
6 decided that we would not do that factual
7 investigation. The Secretary had decided that we
8 would not do a separate -- our own factual
9 investigation.

10 What this refers to is really sort of very
11 preliminary discussions, I believe, probably in June,
12 about how we could at some point get access to
13 information developed by the IG and others so that we
14 could prepare the Secretary. I don't know how that
15 fits into the scope issues but --

16 BY MR. O'CALLAGHAN:

17 Q Okay. In preparing the Secretary for
18 testimony, were any materials that were gathered
19 during the course of the IG's investigations used to
20 help prepare him for testimony?

21 MS. STERGIS: May I have a moment?

22 MR. BUCKLES: I mean, I think we would

1 object to that. Again, this is whether anything on
2 the transcripts or related were improperly released
3 to the White House and other officials and not what
4 the Secretary had access to.

5 MR. O'CALLAGHAN: Or others, period. It's
6 a general statement. It's not limited to White House
7 officials.

8 MR. BUCKLES: The IG works for the
9 Secretary. Are you suggesting that the IG dealing
10 with the Secretary is disclosing that to others? I
11 mean, is that what you're saying?

12 MR. O'CALLAGHAN: First of all, I'm not
13 suggesting anything, okay, I'm just asking
14 questions. The point is I'm trying to determine
15 whether or not there was information that was
16 collected during the investigation that was used by
17 the Secretary's office to prepare him for testimony.

18 MR. BUCKLES: Okay. The second question I
19 would ask on that is, if you recall, there was a
20 letter that I sent to Bob Giuffra explaining some of
21 the territory that we would agree not to get into for
22 the purposes of document production and that -- and

1 that was what we were doing as lawyers trying to
2 prepare the Secretary for his testimony, so I also
3 think we need to honor that.

4 MR. O'CALLAGHAN: And also what falls
5 within that, also -- well, I really don't believe I
6 have to go through every step of where I find the
7 relevancy of the questioning as it deals with my
8 attorney work product. But in addition, I think it's
9 relevant and I'll state it anyway on the record, that
10 relevancy also deals with the transmittal of the
11 information, in connection also -- transmittal of the
12 information with regard to the transcripts to
13 people -- not just specifically the Secretary, but
14 other people, in determining whether or not they're
15 improperly given to anyone. I have to explore the
16 process that was involved and who received the
17 information and who didn't receive the information.

18 MR. BUCKLES: Well, I understand that
19 process. As long as we don't want to get into the
20 details --

21 MR. O'CALLAGHAN: No, no, and I'm not going
22 to, and I don't think I was doing that.

1 MS. STERGIS: I understood your question to
2 be what was shown to the Secretary to help him
3 prepare to testify, and I thought that was something
4 we discussed in the letter.

5 MR. O'CALLAGHAN: Speaking in general with
6 regard to like what -- I can re-tailor that question
7 to avoid going into areas that you just expressed
8 concern about.

9 BY MR. O'CALLAGHAN:

0 Q Let me direct your attention to 11344,
1 number 2. It says "Treasury attorneys need to know
2 what Treasury witnesses know in order to prepare
3 Secretary and Treasury witnesses for Congressional
4 hearings."

5 A Yes.

6 Q And I guess the question is whether or not
7 transcripts were used in order to prepare Treasury
8 witnesses for Congressional hearings.

9 A What transcripts?

0 Q Transcripts that were developed in the
1 course of the IG's investigation.

2 MS. STERGIS: May I have the question

1 reread?

2 MR. O'CALLAGHAN: The question is whether
3 or not Treasury witnesses were -- if transcripts were
4 used to prepare them for Congressional hearings.

5 MS. STERGIS: How is that within the scope
6 of the --

7 MR. O'CALLAGHAN: I'll read this one more
8 time. "Authorizing investigation and public hearings
9 into whether the report issued by the Office of
10 Government Ethics on July 31, 1994 or related
11 transcripts of deposition testimony were improperly
12 released to White House officials or others prior to
13 their testimony before the Committee on Banking,
14 Housing and Urban Affairs pursuant to Senate
15 Resolution 229." It's not limited to just documents
16 going to the White House or just to the OGE report.
17 If you have a specific objection, please state it on
18 the record.

19 MS. STERGIS: Let me have a minute.

20 (Pause.)

21 MR. O'CALLAGHAN: Off the record.

22 (Discussion off the record.)

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1 MR. O'CALLAGHAN: Back on the record. What
2 was the pending question?

3 (The reporter read the record as requested.)

4 THE WITNESS: You were referring to the
5 transcripts of IG interviews?

6 BY MR. O'CALLAGHAN:

7 Q Correct. From now on that refers to RTC
8 and Treasury IG interviews.

9 A Yes.

10 Q And did your office do the preparation of
11 the witnesses?

12 A Some of them.

13 Q Who was involved in prepping the witnesses?

14 A Ken and I were involved in preparing the
15 Secretary. Mark Hingston and I were prepared in
16 preparing Dennis Foreman. Bob McNamara and I were
17 involved in preparing Ben Nye, N-y-e. Other people
18 may have been involved, other general counsel staff
19 may have been involved in the preparation. Those are
20 the ones that I recall.

21 Q And do you know what specific branch of
22 general counsel?

1 A I think the only offices that were involved
2 were my office, administrative and general law, and
3 Bob's office of enforcement, assistant general
4 counsel for enforcement.

5 Q Was your office in possession of the
6 transcripts at any time?

7 A Yes.

8 Q When did your office come to be in
9 possession of the transcripts?

10 A Beginning on July 18 or 19. I'm not
11 sure -- the interviews, I think, continued until
12 sometime later that week, so we came into possession
13 about when they were done.

14 Q I would like to direct your attention to
15 the calendar that you prepared, the entry of July
16 18. Take a moment to review the entry there. If you
17 could read to me what that says there.

18 A "IGs gave witness copies of own
19 transcripts" but it's an abbreviation. "AGL --

20 Q Which stands for?

21 A Administrative and general law, another
22 abbreviation, "received IG transcripts on condition

1 that they be used in assisting AGL prepare for Sec's
2 testimony on Hill." "Sec's" is Secretary, S-e-c,
3 apostrophe S. "Transcripts not to be shared until
4 SBC completed depositions."

5 Q Does that refresh your recollection as to
6 whether it was the 18th or 19th that you first
7 received the transcripts?

8 A This indicates it's the 18th.

9 Q And who gave the transcripts to the office,
10 to your office?

11 A I'm not sure. I think I got them from Ken
12 Schmalzbach. I'm not sure who gave them to him.

13 Q Do you know if Francine Kerner gave them to
14 Mr. Schmalzbach?

15 A I'm not sure. She was our contact in the
16 IG's office. She was our point of interface for most
17 things as the IG counsel.

18 Q Were they received from the IG's office?

19 A Yes.

20 Q Who else received copies of the
21 transcripts?

22 A On July 18?

1 Q Correct.

2 A Beginning on July 18, the Treasury and RTC
3 IGs gave each witness a copy of their transcript.

4 Q Other than the witnesses?

5 A I don't know of anyone else, but there may
6 have been.

7 Q Did Mr. Schmalzbach retain a copy of the
8 transcripts after he gave them --

9 A We're in a small office. The fact that
10 Mr. Schmalzbach had it is really essentially my
11 having it and my staff having it, or people assigned
12 to work on something, so it's not really a question
13 of Schmalzbach retaining a copy and my having a
14 copy. That doesn't really compute.

15 Q Did you keep one copy for the whole office
16 or were other copies made?

17 A I think we had one set and then I believe
18 we made one or two sort of working sets.

19 Q Did you provide any other offices with
20 copies of the transcripts?

21 A Not on July 18 or until later in that
22 week. There were staff from other offices who had

1 access to the transcripts under my direction.

2 Q And who were the staff that had access to
3 the transcripts and when did they have access?

4 A During the week of July 18 I put together a
5 small team of attorneys from several offices in the
6 general counsel's office. Ken Thompson was one. He
7 was, at that time, an attorney in the office of the
8 assistant general counsel for enforcement. David
9 Dougherty and Peter Rittling from my staff. And
10 there were some others, one or two other attorneys on
11 that task force whose names I don't recall today.

12 Q Do you recall what offices of general
13 counsel they were from?

14 A I think one of them may have been Elizabeth
15 Jones from banking and finance, and I'm not sure if
16 there was anybody else or not. There may have been
17 six people. I think I named five including myself.

18 Q What was the purpose of the task force?

19 A We received the IG transcripts, which were,
20 oh, I don't know, about two feet high or something
21 like that. There was a large mass of paper. And we
22 wanted to very quickly get some idea of what was in

1 those transcripts, so I put together this group of
2 people to read them and summarize them.

3 Q And after you got the transcripts that were
4 delivered on the 18th, after that, did you receive
5 transcripts as they were produced?

6 A Yes.

7 Q And how --

8 A I believe there were a couple of IG
9 interviews that occurred on the 18th, 19th and 20th.
10 My best recollection is that the interviews were
11 completed on the 20th with the exception of one of
12 Gene Ludwig, which occurred the following week, and I
13 am fairly certain that we got a couple of the
14 transcripts around the 20th, 21st, 22nd, whenever the
15 IG got them from the court reporter.

16 Q Who were those transcripts delivered to?

17 A To my office. I don't recall to whom.

18 Q Were any other offices provided
19 transcripts -- any other offices in the general
20 counsel's office, that you're aware of?

21 A No, not in this time frame, but later on
22 they were produced to other offices so they could be

1 produced to this committee and to others.

2 Q Was there any kind of agreement reached
3 between the Inspector General's office and your
4 office with regard to the handling of the
5 transcripts?

6 A On July 18?

7 Q Correct.

8 A That we would use them to assist us in our
9 preparation of the Secretary for his testimony.

10 Q And just take another look at the entry on
11 the 18th. Could you read the last two lines?

12 A "Transcripts not to be shared until SBC
13 completed depositions."

14 Q What does that refer to?

15 A It refers to an informal agreement that I
16 understand Treasury had with the Senate Banking
17 Committee staff that we would not share
18 transcripts -- well, not share transcripts and
19 documents other than documents from individual
20 employees' offices with those employees who were
21 going to be fact witnesses until the Senate Banking
22 Committee had taken the witnesses' depositions.

1 Q And were any of the transcripts provided to
2 the witnesses prior to the Senate Banking Committee
3 depositions?

4 A The only person who became a witness who
5 saw the transcripts prior to the completion of the
6 Senate Banking Committee depositions -- well, I don't
7 actually know whether he saw the transcripts. They
8 were provided to attorneys working for Lloyd Cutler.

9 Q Did you state earlier that transcripts were
10 used to prepare witnesses for testimony?

11 A Yes.

12 Q And what witnesses were -- for what
13 witnesses were the transcripts used to prepare for
14 testimony?

15 A The Secretary, Dennis Foreman and Ben Nye.

16 They were also eventually provided to
17 counsel for -- private counsel retained by other
18 witnesses, Roger Altman, Jean Hanson, Josh Steiner,
19 and I believe also Jack DeVore's private counsel.
20 And they were also made public -- redacted copies of
21 the transcripts were made public on or about July 31,
22 so they could have been used by anybody that I know

1 of.

2 Q When were the transcripts used to prep
3 Mr. Nye?

4 A The transcripts themselves were not used
5 that I recall. I don't recall specifically showing
6 Mr. Nye any transcripts. Mr. Nye retained his own
7 private counsel. It actually came as a surprise to
8 us, fairly late in the process, that Mr. Nye was
9 going to be a witness. I think we learned about that
10 sometime during the week of July 24, 25, and we had a
11 discussion -- Bob McNamara and I had a discussion
12 with Ben Nye and then subsequently with Ben Nye and
13 his private counsel where we were all trying to
14 figure out why Ben Nye was going to be a witness.
15 Part of those discussions drew upon information that
16 we had obtained from the transcripts. Though,
17 frankly, we never did really figure out why Ben Nye
18 was going to be a witness.

19 Q And how about Mr. Foreman?

20 A Mr. Foreman -- Mark Hingston had the
21 primary lead for preparing Mr. Foreman. He was
22 assigned to prepare Mr. Foreman for his testimony. I

1 know Mark reviewed the transcripts in preparation for
2 that. Mark worked for me. I and Mark prepared
3 Dennis. I don't recall Dennis actually being shown
4 the transcripts, but I know part of our preparation
5 of Dennis would have drawn upon knowledge we gained
6 from the transcripts.

7 Q How about for counsel to Mr. Steiner?

8 A Sometime during the week of July 24 after
9 the Senate Banking Committee depositions had been
10 completed, Mr. Steiner's counsel was given access to
11 some -- maybe all, but some of the transcripts --

12 Q Do you know the date?

13 A -- at our office. It would be sometime,
14 probably, between July 26 and July 30. Probably the
15 27th or 28th, but that's more of a guess than
16 anything else.

17 Q And I'm sorry, just to go back to
18 Mr. Foreman, when did those discussions take place?

19 A Probably beginning that week, week of July
20 25, maybe the latter half of that week and leading up
21 to the day of his testimony, whenever that was, in
22 the Senate and the House.

1 Q And did you give me a date for Mr. Nye?

2 A I don't think I did. I think we learned
3 during the week of July 24, July 25 that -- I think
4 that was about when we got the list of witnesses
5 from -- I don't actually recall now -- he was not a
6 witness in both houses. I'm not sure which one he
7 was a witness in, but at some point we learned he was
8 going to be a witness and, as I said, it came as
9 something of a surprise to us. And probably shortly
10 after we learned that, we had a conversation with him
11 in which we tried to figure out why he was going to
12 be a witness.

13 Most of the specific preparation of Mr. Nye
14 was done by his private counsel.

15 Q And how about with regard to Ms. Hanson?

16 A Ms. Hanson's attorneys were given access to
17 the transcripts sometime after the Senate Banking
18 Committee completed its depositions, probably again
19 between July 26 and July 30. I do not recall whether
20 they were given access to all of the transcripts or
21 some of them. My best guess is it would be around
22 July 27 or 28.

1 Q Was the agreement that was entered into
2 between IG's office and AGL's office adhered to?

3 A Yes.

4 Q Were any witnesses given access to
5 transcripts before the completion of the Senate
6 Banking Committee depositions?

7 A None, other than Mr. Cutler, who became a
8 witness.

9 Q That's fine. Who prepared the Secretary
10 for testimony? Who was involved in the process and
11 handled the transcript.

12 A Ed Knight, Bob McNamara, Ken Schmalzbach,
13 myself, Mike Levy, assistant secretary for
14 legislative affairs, and Eric North, who was a deputy
15 in that office. I believe that was it.

16 Q Was Ms. Hanson involved in any way?

17 A No.

18 Q How about Mr. Foreman?

19 A No.

20 Q With regard to the transcripts that were
21 provided to you by the IG's office on the 18th and
22 subsequent to that, did you have any understanding

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1 with the IG's office with regard to communications --
2 with regard to communications between your office and
3 general counsel's office?

4 A I'm sorry, I'm part of the general
5 counsel's office. You're talking about Ms. Hanson?

6 Q Specifically Ms. Hanson.

7 A Our agreement was that the transcripts
8 would not be disclosed to any witnesses, and we
9 anticipated Ms. Hanson would be a witness prior to
10 the completion of the Senate Banking Committee
11 depositions.

12 Q Was there a specific agreement or
13 discussion with regard to communications about --
14 with Ms. Hanson or anyone specifically in her office?

15 A About the transcripts? Just the agreement
16 I said, that we assumed that Ms. Hanson was going to
17 be a witness, therefore we assumed she was subject to
18 that agreement with the IG's office.

19 Q My question was, was there specific
20 reference in conversation?

21 A I doubt it. Possibly. Maybe there was a
22 conversation of well, who do we think are going to be

1 the witnesses since we didn't have the complete list,
2 but Ms. Hanson's name would have been near the top of
3 that list if she was discussed. I'm sure she was
4 part of that agreement, but we assumed that she was.

5 Q Who discussed or negotiated the agreement?

6 A I believe Ken Schmalzbach, maybe Bob
7 McNamara.

8 Q Who did they enter the agreement with?

9 A The IG's office. I don't know who. Bob
10 Cesca, maybe Francine Kerner. The investigators from
11 the IG's office. I'm not sure.

12 Q Did they request that the IG's office
13 supply them with the transcripts?

14 A As I said earlier, and I think this earlier
15 document sort of referred to that, one of our
16 problems was that we weren't able to do our own
17 factfinding and we had to prepare witnesses for
18 hearings, so the arrangement was basically we would
19 get access to the transcripts as soon as the IG felt
20 comfortable giving them to us, which was beginning on
21 July 18 when they were starting to get them out to
22 the individual witnesses.

1 Q And when was the first request made for
2 access to the transcripts?

3 MS. STERGIS: By whom?

4 BY MR. O'CALLAGHAN:

5 Q By anyone in AGL's office.

6 A There was some discussion early -- there
7 was some discussion in June about how we were going
8 to try -- how we were going to succeed in preparing
9 the Secretary for testimony and others for testimony,
10 which was scheduled to begin in late July, when we
11 weren't going to be able to do any factual
12 investigation, really, until perhaps late July.

13 And in the course of that discussion, there
14 may have been some discussion of well, maybe we can
15 either sit in on the IG interviews or that we can get
16 access to the IG transcripts. I believe that there
17 was -- I recall being told when I was in Ireland that
18 Ken and Francine -- I knew before I returned from
19 Ireland that we were going to get the transcripts
20 July 18 or 19 or thereabouts, and I returned from
21 Ireland on July 16, so sometime during that period of
22 time there were discussions.

1 Q Your office covered ethics issues; is that
2 correct, your department?

3 A Yes.

4 Q Was there a specific reason why your office
5 didn't conduct an investigation into the White
6 House/Treasury contacts?

7 A Yes. We actually normally would have been
8 involved in almost any ethics questions that would
9 come up, we would do factfinding on. However, the
10 Secretary decided about March 4, that this review
11 would be done by the Office of Government Ethics.
12 The deputy general counsel of the Department of
13 Treasury is also the designated agency ethics
14 official, which is a formal title in the ethics
15 community. He is the chief ethics officer of the
16 department. Because he was potentially a witness in
17 this matter, it was decided that OGE would be
18 involved and that there would be no internal
19 investigation.

20 Q Is that part of the problem that you had
21 with preparing witnesses for testimony?

22 A That's very much the problem we had with

1 preparing witnesses.

2 Can we take about a two-minute break?

3 MR. O'CALLAGHAN: Sure.

4 (Recess.)

5 BY MR. O'CALLAGHAN:

6 Q Back on the record. Did anyone associated
7 with the general counsel's office at Treasury, and
8 that encompasses all the general counsels, members of
9 general counsel's office, ever provide transcripts --
10 other than the people you've already testified to,
11 counsel to the witnesses and also in preparation for
12 the other witnesses -- ever provide transcripts to
13 people outside of the general counsel's office?

14 A Yes.

15 Q And who did they provide them to and when?

16 A I mentioned they were provided to
17 Mr. Cutler's staff. They were released publicly on
18 July 31 or August 1. They were placed in a public
19 reading room and I believe copies were distributed to
20 a number of people, including the Senate and the
21 House.

22 Q Any other instances before they were

1 released publicly?

2 A The redacted transcripts were given, I
3 believe, to the White House counsel's office maybe on
4 July 30 or July 31.

5 Q With regard to unredacted transcripts,
6 other than Mr. Cutler's staff and the people you've
7 already testified to, were they released to anyone
8 before the public release?

9 A I'm not sure the unredacted transcripts
10 have been publicly released, although I'm aware they
11 were provided at some point to Senator Bond and
12 possibly to the committees. Aside from that, no, I
13 don't recall.

14 Q Aside from that, you don't recall any
15 instances?

16 A No.

17 Q Did your office have any role in preparing
18 questions for the interviews that were conducted by
19 the Inspector General's office?

20 A I don't believe so, no, not that I recall.

21 Q Were any other offices in the general
22 counsel's office involved in helping you in preparing

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1 questions for the interviews of the witnesses?

2 A Technically, the Inspector General
3 counsel's office, counsel to the Inspector General,
4 is part of the Office of General Counsel. I believe
5 the IG counsel had some role in that, although for
6 this matter she was outside of the supervision of the
7 general counsel's office. Aside from that, I don't
8 recall anybody having any role in preparing questions
9 for the IG investigators to ask during their
10 interviews, I don't recall that.

11 Q Did you become aware --

12 A There may have been some discussion, may
13 have been some discussion concerning the scope of
14 their interview of the Secretary, but I'm not sure.

15 Q Did you have any discussions with
16 Ms. Kerner about her preparing questions for the
17 interviews?

18 A Not that I recall, no.

19 Q Do you know if anyone in the general
20 counsel's office had discussions with her about
21 preparation of questions for the interviews? Again,
22 this is if you've ever heard.

1 A Not that I recall.

2 Q I would like to show you a document which
3 bears a Bates stamp 014931 through 014938. I'm going
4 to ask you some general questions about it. Take a
5 moment to review it.

6 (Witness reviewed the document.)

7 Have you had a chance to review the
8 document?

9 A Yes.

10 Q Have you ever seen this document or this
11 document in another form?

12 A In another form? Well, I've seen it as two
13 separate documents. It appears to be two documents
14 joined together.

15 Q When did you see these documents?

16 A I would have first seen these documents on
17 or about July 23, maybe just before, just after that.

18 Q How were they brought to your attention?

19 A I asked for them to be prepared.

20 Q Who did you ask to prepare them?

21 A David Dougherty and Peter Rittling.

22 Q What were they prepared in connection with?

1 A We had just completed the review of the IG
2 transcripts and summaries. David and Peter had been
3 on that team along with me and others, as I mentioned
4 earlier, and on July 22, I believe, if that's a
5 Friday, we --

6 Q July 22 was a Friday.

7 A -- received a draft of the IG's report.

8 The Secretary was given a draft of the IG's report by
9 the acting Inspector General. Over that weekend of
10 July 23, 24, probably starting on the evening of the
11 22nd, Peter and David -- and I'm not sure if they
12 were assisted by anyone else, but Peter and David,
13 and to a lesser extent myself, went through the
14 report, just looking to see whether there were areas
15 that we felt from our review of the transcripts left
16 out significant areas or just flat -- the citations
17 or whatever they were referring to in your report
18 were just flat contradicted by the transcripts.

19 Q And did you provide the IG's office with
20 edits or suggestions?

21 A I don't believe we provided this document
22 (indicating) but yes, we did.

1 Q And when did you do that?

2 A It probably was July 24. Might have been
3 the 25th. Could have been the 23rd. Might even have
4 been as late as the 26th, but I'm not sure.

5 Q Had the IG's office solicited your help
6 with the transcripts or I guess --

7 A No, I don't believe so.

8 Q What was their reaction when you provided
9 them with these edits?

10 A I know the final report did not incorporate
11 a lot of the edits, but it did incorporate one or two
12 of them. I think they just took them and -- they
13 were going to do -- there was another scrub that RTC
14 and the IG were going to do, RTC IG and Treasury IG
15 were going to do sometime during the week of the 24th
16 and I assume that they used them in that process.
17 There was no real reaction.

18 Q When you say "scrub," do you mean review?

19 A They had already done the draft which they
20 had reviewed, but I think they decided they wanted to
21 review it again. I'm not sure why.

22 Q Did you have any discussions with Francine

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1 Kerner with regard to edits to the draft report?

2 A We gave them to her, I believe I handed
3 them to her. Again, it was not this (indicating), it
4 was a shorter version of this. And I think she just
5 thanked me. I don't really recall any real
6 discussion about it. I just said we've looked
7 through the transcripts and draft report and these
8 are things where I think you guys have made mistakes
9 or left stuff out that you might want to put in.

10 Q She was the one you delivered it to?

11 A Yes.

12 Q Looking in your calendar, do you recall --
13 and I don't even know if there's a notation, but if
14 you just look at the time period, if you could recall
15 when you gave those to her?

16 A Best I can say is we got the report on July
17 22nd, and I believe it was late afternoon, maybe even
18 early evening, so it could not have been prior to
19 that. And I'm fairly certain that they were given to
20 Francine before the 26th of July. My guess would be
21 it would probably be the Sunday night or the Monday
22 morning.

1 Q Had you performed any edits on a draft
2 previous to that?

3 A Yes.

4 Q And when had that happened?

5 A A number of IG investigations and audits
6 over the years, probably --

7 Q I'm sorry, with respect to this specific
8 draft report.

9 A Oh. No, this is the only draft report I
10 ever saw.

11 Q We can clear off the table here a little
12 bit.

13 I would like to show you a document Bates
14 stamped 389. That's a one-page document on
15 Department of Treasury letterhead. It bears a date
16 stamp of June 27, 1994. Memo for Jean Hanson from
17 Robert Cesca. The subject is "provision of legal
18 advice and services to OIG."

19 Have you seen this document before?

20 A Yes. I do not recall the confidential
21 stamp being on it. With the exception of the
22 confidential stamp I believe I've seen this document

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1 before, yes.

2 Q And when did you see it?

3 A Probably right around June 27. I may have
4 seen drafts before that.

5 Q Who drafted this document?

6 A I think Francine did a first draft. Bob
7 Cesca may have been involved in that drafting process
8 on the IG's side. Ken and I and, at some point,
9 Dennis Foreman would have reviewed and edited the
10 draft, marked it up. This is essentially documenting
11 a negotiated agreement which was negotiated between
12 Ken, myself and Francine.

13 Q When did negotiations begin with regard to
14 this agreement?

15 A Not very long before this, sometime in the
16 week or two preceding this date, June 27.

17 Q What was the impetus for negotiating this
18 agreement?

19 A Well, in the time frame, you can see it's
20 just before the IG's investigation was likely to
21 start, I think we hadn't had the Fiske report but we
22 expected it before the end of June at this point.

1 And we knew that once the Fiske report was done, that
2 the IG investigation would get underway, so we were
3 doing a number of things to be ready for that -- sort
4 of start of that great race, I suppose you could call
5 it. This is one of the things in that process. My
6 recollection is that Francine raised the issue with
7 Dennis and then Dennis asked us to talk to Francine
8 about it.

9 Q Do you recall when she raised the issue
10 with Dennis?

11 A Well, it would be before this, the week or
12 two before. You need to look at this document in the
13 context of much longer, ongoing discussions with the
14 IG's office, going back probably 10 years, which have
15 to do with negotiating memoranda of understanding
16 between the IG and the IG counsel over the IG
17 counsel's relationship.

18 So this may have come up that we will have
19 to reach an agreement about this at some point before
20 the investigation starts. That may well have come up
21 sometime between March and June.

22 Q Had similar agreements been entered into

1 between the general counsel's office and the counsel
2 to the Inspector General?

3 A I don't recall whether we had actually
4 succeeded in reaching an agreement. We had tried to
5 negotiate. My recollection is there was one but I
6 don't recall why I know that.

7 Q Is this a formal MOU, a memorandum of
8 understanding, or how would you describe the
9 document?

10 A Well, I would describe this as a memorandum
11 from Bob Cesca to the general counsel essentially
12 saying this is the way it's going to be. Memorandum
13 of understanding would usually be signed by both
14 parties. Partly because the general counsel was
15 really sort of removed from this process, I think Bob
16 Cesca just basically -- the decision was Cesca would
17 sign the memo, but there was agreement on it. I
18 don't know actually that Jean participated in the
19 discussions at all. I think it was Dennis Foreman,
20 Ken and I, and primarily Ken and I that handled the
21 discussions with the IG.

22 Q Were you satisfied with this agreement once

1 it was presented to you?

2 A Right. Really I had one significant
3 comment on it, and that had to do with the fact that
4 as a technical matter, there would be some question
5 about Francine's performance appraisal period that
6 would end on June 30, 1994. If I recall correctly,
7 you're supposed to have standards in place for 90
8 days before the end of the performance period.

9 I had a discussion with Francine on that
10 and she basically said she was going to waive any
11 objection that she would have to not having her
12 performance standards -- because this talks about a
13 new performance standard for her that would actually
14 cover the last three days of that performance year.
15 I think that was really the only technical glitch in
16 it.

17 Q Was Mr. Schmalzbach satisfied with this
18 agreement?

19 A Yes, as far as I know. You'll have to ask
20 him.

21 Q I can only ask you as far as you know so --

22 A That's right.

1 Q -- do you know who at the White House dealt
2 with the different IG's offices and OGE in connection
3 with this investigation?

4 A I know that Jane Sherburne and Sheila
5 Cheston dealt with the IG's office. I don't know
6 whether Mr. Cutler did and I'm not sure if anyone
7 else did.

8 Q Who at Treasury IG's office dealt with the
9 people at the White House?

10 A I assume the investigators did who were
11 interviewing White House witnesses. I believe that
12 Francine Kerner had some discussions with the White
13 House counsel's office. I'm not sure whether Bob
14 Cesca did and I don't know whether anyone else did.

15 Q What were Ms. Sherburne and Ms. Cheston's
16 specific roles in connection with their participation
17 in the investigation or assisting the investigation?

18 A My understanding of their roles was that
19 Ms. Cheston was on detail from her job as deputy
20 general counsel of the Air Force and Ms. Sherburne
21 was a special government employee at that time. She
22 was a partner at Wilmer, Cutler & Pickering. And

1 Ms. Cheston had been a partner at Wilmer, Cutler &
2 Pickering.

3 And Mr. Cutler, when he came over to the
4 White House from Wilmer, Cutler in March asked them
5 to come to the White House to assist him in both his
6 own review of the -- Mr. Cutler had been asked, as I
7 understood it -- actually, I saw a press conference
8 in which he and the President said this. He had been
9 asked to conduct a review of the White House
10 employees' participation in the Treasury-White House
11 contacts, and it was my understanding that Jane
12 Sherburne and Sheila Cheston were to assist him in
13 that review and in preparation for the hearings.

14 Q Do you know if that investigation was ever
15 conducted?

16 A Mr. Cutler testified about it, so to the
17 extent that I've heard his testimony, I have no
18 reason to doubt that it did.

19 Q Did Ms. Sherburne and Ms. Cheston
20 coordinate their investigation with the Office of
21 Government Ethics in any respect?

22 A I am aware that there were some discussions

1 between the Office of Government Ethics and the White
2 House. I do not recall whether I ever knew -- and I
3 certainly don't recall now -- what the subject of
4 those discussions were.

5 Q Did your office have any contact with the
6 White House with regard to -- specifically let's
7 discuss the investigations being done by the two OIG
8 offices in connection with the OGE report.

9 A I don't think so. There was an issue, I
10 believe, that had to do with access to -- there was a
11 letter that was drafted by -- or a letter that I
12 believe actually eventually came from Ms. Sherburne
13 or Mr. Cutler -- I believe it was to the IG --
14 concerning some aspect of that investigation, and it
15 was a negotiated text of the letter between the OGE
16 and White House counsel. I was just asked to mediate
17 that negotiation. And I'm being very vague about it
18 because actually I recall the letter, but I don't
19 recall the subject matter. I think it had something
20 to do with access to White House documents or
21 something, but I don't actually recall seeing that.

22 Q Did you help negotiate, do you remember?

1 A Not really very much. I think I got the
2 two of them on the phone together and was on the
3 phone with them, but there wasn't much assistance
4 required, really. It was just kind of a making sure
5 everybody was together and agreed on what they wanted
6 to say. I think I suggested a couple of words. They
7 were pretty close by the time they brought me in or
8 by the time I got involved. I think I had been asked
9 to get involved a little bit earlier.

10 Q Why were you asked to get involved in that?

11 A Just because I knew both sides of this
12 issue. It was not really a very big -- I don't
13 recall it as being a big spat, but it was just kind
14 of a bringing the parties together kind of thing.

15 Q You acted as a mediator?

16 A Yeah.

17 Q Have you ever heard or did you ever hear a
18 characterization that Ms. Sherburne was acting as an
19 investigator doing a report for the OGE?

20 A That's sort of a two-part question.

21 Ms. Sherburne was acting as an investigator. My
22 understanding is she was participating or assisting

1 Mr. Cutler in his investigation and was conducting
2 some of the interviews with witnesses. I do not
3 recall that she was doing that for the Office of
4 Government Ethics.

5 Q Do you know if she was asked to do a report
6 for OGE?

7 A Not that I recall. I don't know actually
8 what their arrangement was, if any, with the Office
9 of Government Ethics.

10 Q Were you ever asked to assist the White
11 House in any investigation they were doing with
12 regard to the White House Treasury contacts?

13 A Yes.

14 Q And what were you asked to do?

15 A I was asked to show them documents and to
16 discuss with the IG and his counsel whether they
17 could be given access to the IG interviews.

18 Q And other than the IG interviews, were
19 there other documents you were asked to produce in
20 connection with their investigation?

21 A Yes.

22 Q And what were those?

1 A Some of the documents that we had produced
2 to Mr. Fiske.

3 Q Any documents related to the -- other than
4 the documents you referred to that were provided to
5 Mr. Fiske, any other documents with regard to the
6 IG's investigation?

7 A We're basically one universe of documents
8 here with little carve-outs and maybe little add-ons
9 here and there. In some ways, the Fiske documents
10 were the IG documents, were the Senate Banking and
11 House Banking Committee documents. It would have
12 been a hell of a lot easier if the requests had all
13 been identical, they were not, but the bulk the
14 documents were the same documents, so that's a hard
15 question to answer.

16 MR. PORTNOY: Off the record for one
17 second.

18 MR. O'CALLAGHAN: Sure.
19 (Discussion off the record.)

20 BY MR. O'CALLAGHAN:

21 Q Back on the record. Mr. McHale, there's a
22 couple of documents I want to show you with regard to

1 the draft report as prepared for the Secretary. I'll
2 show you a document Bates stamped -- I'll give you
3 the copy with the clearer Bates stamps on it -- 02479
4 through 02482. There's some highlighting that
5 appears on the fax page. I would like you to take a
6 look at the cover page and also the pages that
7 follow. I'll ask you some general questions about
8 the pages that follow and a specific question about
9 the cover page. For the record, the cover page bears
10 a Treasury Department seal on the front, special
11 agent, got a fax line, July 25, '94 -- it's dated
12 7-25-94 to Clark Blight from Jim Cottos.

13 Have you had a chance to review the
14 document?

15 A Yes.

16 Q I would like to direct your attention to
17 the cover page, the comment, "special instructions
18 section." First of all, just for clarity, have you
19 seen this document before?

20 A Not the cover page, no, and just to make it
21 clear for the record, the highlighting is yours?

22 Q Correct.

1 A Right.

2 Q With that in mind, I would like to direct
3 your attention to writing on the cover page. It says
4 "questions and suggested changes to our report by the
5 Secretary's review team to be discussed tomorrow."

6 Were you aware that there was a team of
7 reviewers as referenced in the fax cover page?

8 A I don't specifically know what the
9 Secretary's review team is, unless it happens to be
10 Peter Rittling, David Dougherty and myself doing the
11 review that we talked about a few minutes ago. The
12 document attached to this looks similar to the
13 document we were discussing a few minutes ago.

14 Q Okay, thank you. That's the only question
15 I have about that document.

16 I would like to show you a document that
17 bears Bates 11089 dated July 29, 1994. It's a
18 one-page document. It reads "memorandum for Kenneth
19 R. Schmalzbach from R. Peter Rittling." Have you
20 seen this document before?

21 A Yes.

22 Q When did you first see it?

1 A I saw it in preparing for this deposition.
2 I had -- when I saw it, I had a recollection of a
3 document similar to this, having seen it before, but
4 I did not specifically recall the document. It may
5 have been the same document.

6 Q Does this document represent some of the
7 edits that you referenced earlier that were passed on
8 to the IG's office to the draft report?

9 A I believe so. I'd have to do a
10 line-by-line comparison, but I believe so.

11 MR. O'CALLAGHAN: Okay, thanks. Just
12 wanted your general recollection. Why don't we break
13 for lunch.

14 (Whereupon, at 1:06 p.m., the deposition
15 was recessed, to be reconvened at 2:30 p.m. this same
16 day.)
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18
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22

AFTERNOON SESSION (2:30 p.m.)

Whereupon,

STEPHEN J. MC HALE

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Continued)

BY MR. O'CALLAGHAN:

Q Back on the record. I would like to show you a document which bears Bates stamp 016031. It's a one-page document. If you would take a moment to review it and let me know when you've had a chance to consider the document.

(Witness reviewed the document.)

A Okay.

Q Have you ever seen this document before?

A Probably. I don't specifically recall this document. It's similar to the other ones, essentially a to-do list. This is general notes of Mr. Schmalzbach made and circulated to Bob and I.

Q So he normally circulated to-do lists to you and Bob?

A Sometimes Bob did, sometimes I did, but Ken

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often did and I believe this is one of Ken's.

Q Did Mr. Schmalzbach have a lot of contact with Ms. Kerner during the period March through August 1994?

A Like me and like the attorneys in my office, he would have a lot of contact with Ms. Kerner on a routine basis.

Q Did he have any discussions with her regarding the factual substance of the investigation that was being done by the two IG offices?

A Can you repeat that? I'm sorry.

Q Sure. Did he have discussions with her regarding the factual content or substance of the investigations that were being done by the two IG offices?

A I don't believe so, except in the context of arranging to get the IG transcripts, which, of course, contained factual discussion and that sort of thing. I don't recall.

Q Did you have any discussions with Ms. Kerner regarding the factual content or substance of the investigations that were being done by the two

1 IG offices?

2 A I don't think so prior to getting a copy of
3 their draft report.

4 Q How about after getting a copy of the draft
5 report?

6 A Well, we prepared those edits that you
7 showed me earlier. Those dealt with some of the
8 factual findings of the IG report. That was provided
9 to Ms. Kerner. At some later date, possibly even
10 after the hearings began, but at some later date I
11 think we talked about a couple of the statements in
12 the IG report. I can't even remember what that was,
13 but I had some questions, there were some things in
14 it that, even after we had the final report, still
15 struck me as being not consistent with the testimony
16 that was in the transcripts. And I think Ms. Kerner
17 basically indicated to me that was the IG's summary
18 of what they thought they had gotten out of the
19 transcripts, so it didn't reflect what I saw in the
20 transcripts and some of those things are on that
21 page.

22 Q Did she agree with the findings in the

1 report or did she agree with you or come to a
2 different conclusion?

3 A As far as I know, she agreed with the
4 report. Like any document, it was essentially the
5 work of a committee so you'll have to ask her whether
6 she agrees with all of it.

7 Q I would like to direct your attention under
8 the first heading, which is "IG factfinding," the
9 last item under that heading reads "IG interviews the
10 White House witnesses or review of their statements
11 to White House counsel."

12 Do you know what that refers to?

13 A Yeah, I think this would have, again, been
14 something that would have been done in the kind of
15 June time frame while we were all trying to gear up.
16 And as you can tell from the next bullet, it was part
17 of the process of how was all this going to get done
18 in such a short time.

19 I think there was some discussion about --
20 you know, there was some brief discussion about would
21 the White House make their witnesses available to the
22 IG or would the White House insist on just basically

1 giving proffers to the IG about what the White House
2 witnesses were telling the White House counsel, in
3 the event the White House fully cooperated and
4 allowed all the witnesses to be interviewed. But
5 there was some discussion about that and whether we
6 would need the Secretary to be involved at that point
7 to basically try to make sure the IG has the access
8 they needed.

9 Q The next bulleted item reads "Treasury
10 counsel needs to know what Treasury witnesses'
11 testimony will be." Is that along the same lines as
12 what you were just discussing? Why don't you just
13 explain to me what that refers to. That will be
14 easier.

15 A We had two things we had to do as the
16 Treasury lawyers. One, we had to prepare the
17 Secretary to testify and Dennis Foreman and later, we
18 learned, Ben Nye, but we had to prepare the Secretary
19 to testify. And secondly, we had to be prepared to
20 advise the Secretary on what, if any, action he would
21 have to take with regard to Treasury officials whose
22 conduct was under investigation by the IG and the

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1 OGE. So we --

2 Q Can I just stop you for a moment?

3 A Sure, uh-huh.

4 Q With regard to that, action that the
5 Treasury would have to take with regard to those
6 officials being investigated, was that action being
7 considered in reference to the analysis done by OGE
8 or another analysis being done by Department of
9 Treasury?

10 A Well, the Secretary had asked for OGE's
11 advice. OGE had asked for the IGs to conduct their
12 review.

13 Q The investigation; correct?

14 A The investigation. The IGs were doing an
15 investigation for OGE. OGE was going to report to
16 the Secretary. At some point we knew we were going
17 to get the IG report and the OGE report. We didn't
18 know what those reports were going to say. We didn't
19 know what OGE was going to conclude, but we knew that
20 when we got them. And at the time frame -- as the
21 time started to compress, we knew we were going to
22 have a very short window that we were going to have

1 to advise the Secretary on what action he should take
2 with regard to the findings of that report, which
3 could have been adverse or whatever they could have
4 been. There was a potential range of findings.

5 So again, we needed -- we were not allowed
6 to be conducting our own factual review, as I've
7 testified earlier today, so we needed --

8 Q By the Secretary's request?

9 A By the Secretary's direction. But we
10 needed, on a fairly fast basis, to be very smart on
11 the facts to advise the Secretary. So we were trying
12 to come up with different ways of getting smart on
13 the facts quickly. And this is in the June time
14 frame. Again, you know, one possibility was that we
15 would sort of sit like note-taking dummies in the
16 corner of the IG interview and write down whatever we
17 felt was relevant.

18 Q Did that ever happen?

19 A No. Another was that we would conduct our
20 own interviews after the IG conducted theirs, and
21 that did not happen. And then lastly, that we would
22 review the reports of interview, although later on --

1 I believe at this point we didn't know there would
2 actually be transcripts.

3 Q You didn't know they were going to actually
4 transcribe the deposition?

5 A Right, I would think from that reference
6 it's just looking at how we're going to get smart on
7 the facts quickly.

8 Q Thank you. I would like to direct your
9 attention to a document Bates stamped 016018, it's a
10 one-page document. It has handwritten notes on it,
11 appears to be a copy taken out of a notebook. Let me
12 know when you've had a chance to review it.

13 (Witness reviewed the document.)

14 A Okay.

15 Q Have you ever seen this document?

16 A I believe I've seen it in preparation for
17 this deposition. I don't believe I had seen it
18 before then.

19 Q And how did it come to your attention in
20 preparation for the deposition?

21 A I looked over the documents that Treasury
22 had produced.

1 Q I would like to direct your attention to
2 the document. Do you recognize the handwriting
3 there?

4 A Yes.

5 Q And whose handwriting is that?

6 A Ken Schmalzbach's.

7 Q And the date on the top of the page is
8 7-13. Do you know what the first notation refers
9 to? It says "transcripts returned."

10 A No.

11 Q Do you have any knowledge of any
12 transcripts that were circulating around the 13th of
13 July?

14 A I was out of the country. No, I don't.

15 Q Even though you were out of the country,
16 were you ever told?

17 A No, I wasn't. I don't recall.

18 Q Thank you. I would like to show you
19 another document, Bates stamped 016019. Have you
20 seen this document before?

21 A I'm told I've looked at the Treasury
22 production and this appears to be a Treasury document

1 that's produced. I do not specifically recall this
2 page.

3 Q Don't recall, okay. Again, there's a
4 notation on 7-13-94 about the initials EK above it,
5 then it reads "Beattie concern about direction of IG
6 inquiry." Do you know anyone with the last name
7 Beattie?

8 A Yes.

9 Q Who do you know by the last name Beattie?

10 A Beattie is the last name of Roger Altman's
11 attorney, personal counsel. I think his first name
12 is Richard, but I'm not sure.

13 Q Have you ever learned -- actually, let me
14 ask you this question: Do you recognize the
15 handwriting on the document?

16 A Yes.

17 Q Whose handwriting is it?

18 A Ken Schmalzbach's.

19 Q Have you ever learned that Mr. Beattie
20 expressed concern to Mr. Schmalzbach about the
21 direction of the IG inquiry?

22 A No.

1 Q I would like to show you a document Bates
2 stamped 016021. Again, it's a one-page document. A
3 copy of a page of a notebook with handwritten notes,
4 notation EK on the top, to-do list. The text reads
5 "IG has arranged all interviews of White House
6 folks." Do you recognize the handwriting?

7 A Yes.

8 Q Whose handwriting is it?

9 A Ken Schmalzbach's.

10 Q Did Mr. Schmalzbach discuss the scheduling
11 of the White House interviews with the Inspector
12 General's office, with anyone at IG or connected with
13 the investigation?

14 A I know Mr. Schmalzbach was generally aware
15 of when interviews were going to be held because we
16 were tracking how long it was going to take the IGs
17 to complete their review because we were concerned
18 about the end product, the report.

19 While I was in Ireland, we had discussions
20 about interviews that had occurred and that would be
21 occurring. I do know he was aware that some White
22 House interviews had not happened yet while I was in

1 Ireland, would be happening in the following few
2 days, so I assume he talked to somebody about it.

3 Q And was there a specific deadline for the
4 completion of the investigation and the production of
5 the analysis?

6 A That was our hope. Our hope had been that
7 the investigation would be completed by July -- may
8 I?

9 Q Certainly, please.

10 A It's mostly the dates that's helping
11 refresh the recollection. By the weekend of July 16
12 and 17, just looking at a calendar, that the OGE --
13 OGE had told us that they would need five to seven
14 days, I can't remember exactly which, to do an
15 analysis of the IG findings, report, to give the
16 Secretary advice. We were working back from the
17 House Banking Committee's announced start date of
18 July 26 and working back from that, we had hoped that
19 the IG was going to -- we want to get the OGE report
20 before the hearing so the Secretary could decide
21 what, if any, action he needed to take before the
22 hearings started.

1 Working back from that, we had hoped to get
 2 the IG report on the weekend of the 16th and 17th or
 3 two or three days thereafter, so that was what we had
 4 expressed to the IGs. At the outset the IG thought
 5 that -- the IG's office thought that they would be
 6 able to comply with that, but I can't really say
 7 there was -- the IG may have imposed a deadline. We
 8 imposed a hope.

9 Q Did anyone from the White House express a
 10 similar interest in having the report done in time
 11 for the hearings?

12 A The report wasn't being done for the White
 13 House. It was being done for the Secretary.

14 Q But do you know if they expressed a --

15 A Not that I'm aware of.

16 Q -- desire to have that done?

17 A Not that I'm aware of.

18 Q I would like to have you take a look at
 19 your calendar again, the one you produced, and to
 20 take a look at the portion July 17 through 23. If
 21 you could read the handwritten portion which begins
 22 on the 22nd to the bottom of the page to the best

1 that you can.

2 A On the 22nd there's a line, "IG draft
 3 report to Sec," secretary, and also government
 4 ethics, abbreviated. Then there's a square bracket
 5 which indicates to me at the time I wrote this that I
 6 wasn't sure whether this is the 22nd or 23rd, but
 7 what it says is "White House counsel," or "WHC,"
 8 "requests copies of transcripts from Secretary."
 9 Then on the 23rd it says "SJM," which is me, "spoke
 10 with IG and IG counsel -- Secretary said he wanted to
 11 provide Cutler with transcripts to assist in
 12 preparing for testimony -- but could not share with
 13 other witnesses."

14 Q With regard to the bracketed portion, with
 15 regard to the "White House counsel requests copies of
 16 transcripts from Secretary," did the White House
 17 counsel make a request for copies of the transcripts
 18 on the 22nd?

19 A The bracket indicates I'm not sure actually
 20 whether it was the 22nd or 23rd, and I however talked
 21 to Jane Sherburne, either on the 22nd or 23rd, in
 22 which she made that request to me. And I believe it

1 had been made to others as well.

2 Q Who else were the requests made to or the
3 request made to?

4 A The request was first made -- I mean, the
5 request was first made I think as early as early
6 July, July 5, I believe, to the IG counsel. It was
7 sort of an open-ended request. It was repeated on
8 several occasions.

9 Q Who was making the request at this time, at
10 the July 5 time?

11 A I was not a party to that request. My
12 understanding is it was either Jane Sherburne or
13 Ms. Cheston to Francine Kerner and maybe the IG
14 investigators and maybe the RTC IG folks, I don't
15 know.

16 Q Do you know how many times before the 22nd
17 of July they requested copies of the transcripts,
18 copies of transcripts be provided?

19 A I think there had been a discussion July 5
20 in which they had asked for them and basically it was
21 a pending request. Whether you can actually say they
22 sort of kept on saying well, let us ask again, I

130

1 think might be a little misleading. It was a subject
2 of discussion.

3 Q Revisited on a couple of occasions?

4 A Right, but the first time I actually
5 participated in such a discussion directly with White
6 House counsel would have been this July 22/23 time
7 frame.

8 Q Was anyone else in your office approached
9 about providing transcripts other than you?

10 A I know Ken was aware of the pending
11 request. I don't know whether he specifically
12 discussed them or not. I know Bob McNamara was aware
13 of the pending request. Again, I don't know whether
14 he had specifically discussed it or not, and Ed
15 Knight was aware of the request. Again, I don't know
16 whether he had discussed it specifically or not.

17 Q How did you become aware of the pending
18 request?

19 A Well, since the request was initially made
20 when I was in Ireland, I assume I probably learned of
21 it from Ken at some point when he was -- either in
22 one of our conversations from Ireland or when he sort

1 of briefed me upon my return.

2 Q And how did he learn of the request?

3 A I don't know.

4 Q Do you know how Ed Knight learned of the
5 request?

6 MS. STERGIS: Which of the requests?

7 MR. O'CALLAGHAN: July 5 request.

8 THE WITNESS: I'm not sure he was aware
9 specifically of the July 5 request. As I said, it
10 was a request in a conversation that appears to have
11 been between the White House counsel and IG counsel.
12 At some point, a wider group of people became aware
13 that this was a pending request from the White House
14 that had not been granted. Whether he actually, even
15 to this day, is specifically aware of the July 5
16 conversation, I don't know.

17 BY MR. O'CALLAGHAN:

18 Q Do you know when he became generally aware
19 of the specific request?

20 A The first time --

21 Q I'm sorry, the pending request.

22 A It might be better if I answered the

1 question of when did I ever discuss this with Ed
2 because I don't know when he learned of it. I
3 discussed it with him probably -- I'm fairly certain
4 on July 22 or maybe the 23rd.

5 Q How did you come to discuss it with him on
6 July 22?

7 A Ed Knight, Bob McNamara, Ken Schmalzbach
8 and I met three to four to five times a day during
9 this period to discuss preparation of the Secretary,
10 to discuss how we were going to get ready to give the
11 Secretary the advice that we would have to give him,
12 to discuss a whole wide range of issues as we
13 proceeded.

14 In the course of one of those
15 conversations, I know I raised with that team Jane's
16 request to me I believe -- it is possible that I also
17 learned or -- it's unclear in my recollection today
18 as to whether at some point I learned that the
19 Secretary and/or Ed had had a conversation with Lloyd
20 Cutler and/or Jane Sherburne.

21 Q And when did that conversation occur?

22 A It would have been on the 22nd or 23rd,

1 about the time that I received the request from Jane.

2 Q And what was the discussion that occurred
3 with Mr. Cutler?

4 A I wasn't a party to that discussion.

5 Q Were you told?

6 A My impression today, and even at the time,
7 was that there was a discussion between either Ed and
8 the Secretary or the Secretary and Mr. Cutler in
9 which, in part, this request for transcripts was
10 reiterated.

11 Q And how did they respond to that?

12 A I don't know how they responded to it in
13 that conversation. I wasn't a party to it. When I
14 raised -- it was about the same time --

15 Q Let me stop you for just a second. You
16 said you weren't a party to the conversation but did
17 you ever learn what the response was?

18 A No.

19 Q Please continue, you were saying subsequent
20 conversations?

21 A There were multiple tracks here in the
22 sense that we were dealing with Jane and Sheila at

1 our level and there may have been a conversation by
2 Lloyd Cutler to the Secretary. When I raised on the
3 22nd or the 23rd Jane Sherburne's request to me for
4 the transcripts, Ed was aware of that request for the
5 transcripts.

6 Q Are you referring to the pending --

7 A Ed was aware that the White House counsel
8 wanted to get the transcripts. He was aware that --

9 Q You're referring to the Cutler request; is
10 that right?

11 A Yes, to the Cutler/Sherburne, this sort of
12 pending -- long-term pending request.

13 MR. PORTNOY: You're referring to a general
14 request or specific request?

15 THE WITNESS: A request for the IG
16 transcripts.

17 MR. PORTNOY: But are you referring to a
18 specific conversation or generalized desire?

19 THE WITNESS: Right. Well, there obviously
20 were a series of specific conversations. The only
21 one that I was a party to was on either the afternoon
22 of the 22nd or morning of the 23rd. When I raised

1 that request with the team, either immediately in
2 that first discussion or an hour or so later in a
3 subsequent discussion, Ed advised me that the
4 Secretary believed it was appropriate for Lloyd
5 Cutler to get the IG transcripts. And I was assigned
6 from that group to discuss the request with the
7 acting IG and the IG counsel and to see if they would
8 be agreeable to sending the transcripts over and if
9 so, to arrange for their transfer to the White
10 House.

11 The reason I'm hesitating here, and I
12 apologize, as I said, there were multiple meetings
13 and group conversations, and looking back they
14 somewhat telescope and it's a little hard to parse
15 them out, but that's the best of my recollection.

16 BY MR. O'CALLAGHAN:

17 Q I want to see if I can focus in on whether
18 or not when you told the group, you said, about the
19 Sherburne request that was made to you, had
20 Mr. Cutler made a request to the Secretary and Ed
21 Knight, or just the Secretary previously to that
22 specifically?

1 MS. STERGIS: I think that's been asked and
2 answered.

3 THE WITNESS: Yeah, it's a little --

4 MR. O'CALLAGHAN: I don't think it's been
5 put specifically in time.

6 THE WITNESS: There were multiple
7 conversations in this time frame with Ed Knight.

8 BY MR. O'CALLAGHAN:

9 Q Between Ed Knight and who?

10 A Ed Knight and me, Schmalzbach and
11 McNamara. To the best of my recollection, I think I
12 raised this request from Sherburne, and to the best
13 of my recollection, it was an hour or so later in a
14 subsequent meeting in which I got the Secretary's
15 statement and it was my sense that the Secretary had
16 talked to Cutler.

17 Q It was your sense that he had talked to him
18 before you got the call from Sherburne or after?

19 A I don't know. I don't know that.

20 Q Do you know why a call was made to both you
21 and to the Secretary?

22 MS. STERGIS: I don't know that that's the

1 testimony. Objection.

2 THE WITNESS: Well, it would be something
3 that would be within the White House counsel's
4 office. I have no idea. I'm not sure that such a
5 call took place. It is my belief, my best
6 recollection, that it seemed to me at the time that
7 such a call had occurred. I do not specifically know
8 that it had. And when that call took place, I don't
9 know why there were multiple calls -- I do not know
10 if there were multiple calls.

11 BY MR. O'CALLAGHAN:

12 Q After you were told that the Secretary
13 thought it would be appropriate to release the
14 transcripts to the White House --

15 A Can I go back for one second?

16 MS. STERGIS: Objection. Misstates the
17 testimony.

18 THE WITNESS: My recollection today is seen
19 through sort of a filter of other information I
20 gained afterwards. The Secretary testified that he
21 spoke to Cutler in September. And my recollection
22 today is a little bit clouded by the fact that I'm

1 familiar with that testimony, I was at all the
2 hearings, et cetera. And so when I tell you today
3 there was such a call, it's a little hard for me to
4 tell you now when I first knew of such a call. I
5 don't know whether it was the Secretary's testimony
6 or during the preparation of the Secretary. The
7 Secretary testified to such a call.

8 It may be that I learned about it on the
9 22nd and maybe on the 25th. It may be that I learned
10 about it on August whatever date it was that the
11 Secretary testified. That's sort of -- that's why
12 I'm having a little difficulty pulling this back.

13 BY MR. O'CALLAGHAN:

14 Q Right. That's understandable. When you
15 received the call from Ms. Sherburne at the White
16 House, what was your reaction to her request?

17 A It seemed reasonable.

18 Q And if I mischaracterize what you said, let
19 me know, and I'm sure counsel will let me know also,
20 but after you received the call, I believe you said
21 you told the group that you had received a request?

22 A Right.

1 Q And what happened with respect to the
2 request after that?

3 A During either that immediate meeting -- or
4 shortly thereafter -- of the group, I was told that
5 the Secretary would like the IG, if possible, to
6 comply with that request because the Secretary
7 thought it was appropriate to provide that
8 information to Mr. Cutler. I was asked to discuss
9 that with the IG and IG counsel, and if they were
10 agreeable, to arrange to get the transcripts to the
11 White House counsel's office.

12 Q And what did you do next in reference to
13 this issue?

14 A Either on the night of the 22nd or the
15 23rd, I called Francine Kerner and Bob Cesca. I
16 believe I had to call them through the Treasury
17 operator because they were not in the office. Best
18 of my recollection is that I got Bob Cesca first and
19 that he wanted to discuss it with Francine, and at
20 some point I talked to Francine and at some point I
21 talked to both of them together.

22 Q What time of day did you make the first

1 phone call?

2 A I don't even remember what day it was. It
3 was either the 22nd or 23rd. This issue, I think,
4 started on the -- we got the IG draft report on the
5 22nd.

6 Q Which was a Friday?

7 A Right. And at that point we were told by
8 the Deputy IG that as far as he was concerned, his
9 investigation was complete, he had conducted all the
10 interviews that he thought he was going to conduct
11 and that this report, at least in his view, was his
12 report.

13 Q Who was that?

14 A That was Bob Cesca. And at some point
15 after we received that report, all these
16 conversations occurred. The transcripts were sent to
17 the White House on the late afternoon of the 23rd, so
18 somewhere between getting the report on the 22nd and
19 sending the transcripts on the 23rd, I had several
20 conversations with Francine and Cesca, the last of
21 which was on the afternoon of the 23rd shortly before
22 I was able to send them to the White House when they

1 agreed, so -- but there were conversations in here,
2 and exactly when each one occurred, that's probably
3 as specific as I can get.

4 Q I would like to try to walk through and
5 maybe we can hit some more specifics if possible.

6 A Sure.

7 Q When you received the call from
8 Ms. Sherburne, had you received a copy of the draft
9 report at that point?

10 A I believe so.

11 Q When did you receive the draft report?

12 A I think it was late afternoon on the 22nd.

13 Q Were you in the office when you got the
14 call from Ms. Sherburne?

15 A I don't know. I don't recall. I may have
16 returned it. I have no idea.

17 Q The question was --

18 A I was in the building. I was at work.

19 Q Were you working that day?

20 A Yes, right.

21 Q How soon after you got the call from
22 Ms. Sherburne did you relate that you'd received the

1 call --

2 A At the next get-together.

3 Q At the next meeting?

4 A At the next get-together of Ed, Bob and
5 Ken. At that point we were meeting three, four times
6 a day, so it probably would have been within a couple
7 hours or maybe a few minutes. I don't recall
8 exactly. I'm fairly certain we did not call a
9 specific meeting for this purpose. We had enough
10 things that were going on.

11 Q And what was the reaction of the
12 individuals at the meeting to your relating to them
13 that you had received a request for the transcripts
14 from Ms. Sherburne?

15 A Well, as I said, the whole idea that the
16 White House would like to get the transcripts was not
17 a surprise, and I think what made this request a
18 little bit different and really caused everybody to
19 kind of analyze it a little differently in that
20 meeting and subsequently was that we had the draft
21 report and the IG was telling us that basically they
22 had interviewed everybody they planned to interview

1 and this report, in their view, was a final report.
2 It was still marked draft because they were sending
3 it to the Office of Government Ethics, but in their
4 view, it was their product.

5 Q Was this the first formal request you had
6 received from the White House for the transcripts?

7 A Best of my recollection. I personally, to
8 the best of my recollection.

9 Q Did you call Mr. Cesca after the meeting
10 where you relayed the point that Ms. Sherburne had
11 called and asked for the transcripts?

12 A Right, I did after that meeting, yes.

13 Q Was it the same day?

14 A That I don't recall, because I'm not sure
15 how late in the night we eventually had this
16 conversation about the Secretary would like this to
17 happen. If it was very late at night I might have
18 waited until the next morning. And that's why I do
19 not actually recall now whether -- I may have tried
20 to get hold of them on the 22nd and not been able to
21 until the 23rd. I'm not sure exactly the time of
22 those telephone calls.

1 Q When you first got hold of Mr. Cesca, were
2 you at the office when you made the phone call?

3 A Yes. Like you, I think at that time I was
4 in the office almost all the time.

5 Q Do you know what clothes you were wearing?
6 Were you in casual clothes or in a suit?

7 A I have no idea, no recollection.

8 Q I'm just trying to help your recollection.

9 A If it was a Friday I was in a suit, if it
10 was a Saturday, I wasn't.

11 Q That's why I'm asking if you recall.

12 A I don't recall.

13 Q When you spoke with Mr. Cesca for the first
14 time with regard to Ms. Sherburne's request, did you
15 call him at home or at the office?

16 A I believe I used the Treasury operator to
17 call him. The Treasury operators are very good at
18 finding officials, but I don't actually know where
19 Mr. Cesca was. He was not in his office. I'm sure I
20 tried his office first. I don't specifically recall,
21 but that would be my normal practice.

22 Q Do you know where he was when you finally

1 reached him after his secretary -- Treasury operator
2 found him?

3 A No, I don't. My recollection of at least
4 one of the conversations I had with him, he was not
5 at home, he was at some event -- some school event
6 for his daughter or something, but that's to the best
7 of my recollection and I can't remember in that
8 conversation whether I called him or he called me.

9 Q But it's your recollection that with regard
10 to the IG's office, the first person you got in
11 contact with was Cesca?

12 A I think so.

13 Q Is there any possibility your first contact
14 was with Ms. Kerner?

15 A Yes, it's a possibility. My recollection
16 is it was with Cesca.

17 Q With regard to the first deal with
18 Mr. Cesca and the conversations you had with him, in
19 the first conversation you had with him with regard
20 to this issue, what was discussed?

21 A My recollection is that I told him that we
22 had received the request.

1 Q Did you tell him who you had received it
2 from?

3 A Whether I mentioned Ms. Sherburne's name, I
4 don't know. I think I told him about the secretary's
5 position on it. There's a piece of my memory on this
6 that suggests to me that somehow I may have talked to
7 Cesca -- even before I knew the Secretary's position
8 on it -- briefly and that it may even have been at
9 his request to ask us what the Secretary's position
10 was. Maybe he has a better recollection of that than
11 I do, but I know in one of our early specific
12 conversations about it, I expressed to him the
13 Secretary's view that the Secretary would like to be
14 able to accommodate Mr. Cutler's request and that he
15 believed it was appropriate if they wouldn't
16 interfere with the IG's investigation, if the IG was
17 agreeable.

18 Q What was Mr. Cesca's initial reaction?

19 A I think Mr. Cesca really didn't have a
20 problem with doing that.

21 Q Did he tell you he didn't have a problem or
22 was he silent?

1 A He said he wanted to talk to Francine. I
2 know he and Francine needed to talk about it. And
3 his point to me was that they had done all the
4 interviews they planned to do and that the report was
5 complete. I don't believe that he voiced any
6 objection to it.

7 Q Did he express any concerns about releasing
8 the transcripts before the final analysis was done by
9 OGE?

10 A No.

11 Q Did he relate to you any issues he needed
12 to discuss, any specific issues he needed to discuss
13 with Ms. Kerner before getting back to you?

14 A Not the issues. I mean, the general issue
15 of delivery of the transcripts to the White House was
16 the extent of the conversation. He didn't say I have
17 this concern and I need to talk it over with
18 Francine, no.

19 Q Did he express any view as to whether he
20 needed to talk to her about the appropriateness of
21 the transfer?

22 A He was going to talk to her about the

1 transfer and whatever concerns he or she might have
2 had about it. No, he didn't.

3 Q So he didn't specifically address any
4 concerns?

5 A Not that I recall.

6 Q Okay. And after you spoke with Mr. Cesca
7 the first time, did --

8 A Remember, I did say that I'm not -- I think
9 I talked to Cesca first and then Francine, but it
10 might have been the other way around. At some point
11 though, I talked to Cesca and at some point I talked
12 to Francine and at some point, both of them together.

13 Q Did you have one conversation alone with
14 Ms. Kerner?

15 A Yes, my best recollection is I had at least
16 one, probably only one conversation alone on the
17 phone with Ms. Kerner about this.

18 Q Is there a possibility you might have had
19 more than one?

20 A It's possible.

21 Q Do you recall the contents of the
22 discussion of any conversations you had with

1 Ms. Kerner on the subject?

2 A Somewhat.

3 Q If you could give me your best
4 recollection.

5 A She did not think it would be appropriate
6 to give the transcripts to the White House. She
7 expressed concern not so much that it would be
8 inappropriate, but that the IG would be criticized
9 for doing it, that possibly they would be criticized
10 for losing their independence or something like that,
11 but she didn't have any legal objection to it that
12 she voiced or any concern that it was improper in
13 some way. It was more that the transcripts were
14 going to be made public anyway within a matter of
15 days in total, and she felt that we should wait until
16 then.

17 Q And what do you mean they were going to be
18 made public in total in a couple of days?

19 A The intent all along, as I understood it,
20 was that when the IG report was published and the OGE
21 report was published, the transcripts would be
22 published as well.

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1 Q Were you aware at that time that the RTC
2 considered some of the information contained in the
3 transcripts to be confidential?

4 A No. In fact, my understanding was that the
5 RTC along with our IG intended to make the
6 transcripts public in total.

7 Q How were you aware of that?

8 A From Francine.

9 Q She related that to you?

10 A Yes.

11 Q When did she relate that to you?

12 A Sometime in the July time frame, probably
13 after I returned from Ireland, since I didn't talk to
14 her while I was there.

15 Q Did you respond or express your opinion to
16 Ms. Kerner with regard to her concerns about the
17 handing over the transcripts?

18 A Uh-huh.

19 Q What did you say to her?

20 A Well, we talked about the fact that the
21 whole process was somewhat delayed. We were sort of,
22 you know, a week behind our hoped-for schedule.

1 Maybe not a week, but five or six days behind our
2 hoped-for schedule. We had already heard earlier in
3 the week, a day or two earlier, that OGE was
4 beginning to be very uncertain as to when they would
5 be able to get their opinion done because they were
6 not sure when they were going to get the IG report.

7 So they weren't sure when they were going
8 to get started, so I explained to her that we were
9 behind schedule, that we had -- under what we had
10 hoped to be the sort of plan of the way things would
11 proceed, that all of the stuff, including the IG
12 report, the transcripts, the records, the OGE
13 advisory opinion and the Secretary's decision on what
14 action, if any, he was going to take, all of that
15 would be done before July 26, the first day of the
16 House Banking Committee hearings, that Mr. Cutler was
17 going to testify on the 26th, that his testimony was
18 going to be the report of his review, investigation,
19 whatever you want to call it, that Ms. Sherburne had
20 expressed to me that they felt that they needed to
21 review the transcripts ahead of that testimony as
22 they prepared that testimony to ensure that their

1 review was complete, that they had resolved
2 everything.

3 Q What do you mean by that, she wanted to
4 make sure that their review was complete?

5 A That the White House counsel's review was
6 complete, that Mr. Cutler and his staff's -- that
7 they had asked all the questions they needed to
8 asked. They had not talked to all the Treasury
9 witnesses. Ms. Hanson had declined to talk to them.
10 I believe that they may have talked to her lawyers.
11 So they hadn't talked to everybody that the IGs had
12 talked to.

13 Q Did they have access to any of the
14 questions that were posed to the deponents in the IG
15 investigation?

16 A Before they were asked? I don't know
17 whether they represented White House witnesses in the
18 IG interviews. They might have. I have no idea.

19 Q Do you know if they were provided any of
20 the questions that were asked of the deponents?

21 MR. PORTNOY: Could you state that again?
22 I'm sorry.

1 THE WITNESS: I'm getting a little confused
2 on that one.

3 BY MR. O'CALLAGHAN:

4 Q The question is whether the White House
5 counsel was ever supplied with copies of the
6 questions that were asked the deponents in the IG
7 investigation.

8 A They were eventually provided with the
9 transcripts.

10 Q Previous to that?

11 A Not that I'm aware.

12 Q So you were discussing how Ms. Sherburne
13 wanted to make sure that their review was complete.

14 A This is what I expressed to Ms. Kerner,
15 actually, and eventually also to Mr. Cesca, that
16 Ms. Sherburne wanted to make sure -- she was in the
17 process of preparing Mr. Cutler's testimony for the
18 26th, and because that testimony was essentially his
19 report of investigation, she wanted to review the
20 transcripts to make sure that they had talked to
21 everybody they needed to talk to, that they had asked
22 all the questions they needed to ask, that they had

1 gotten all the information they needed, that they had
2 a complete picture, that -- we discussed the fact
3 that the IGs believed they had interviewed everybody
4 they were going to interview, that everybody was on
5 the record both with the IG, with the grand jury,
6 with the House Banking Committee, with the Senate for
7 the most part -- I think the Senate was still doing a
8 couple of depositions -- that our view that it was
9 perfectly appropriate for the White House to have
10 whatever information they believed was appropriate to
11 have from a Cabinet agency. That's sort of the
12 general tenor of the discussion. And I also, of
13 course, expressed the Secretary's view.

14 Q And did she have a reaction to that?

15 A Ms. Kerner's concern, as far as I recall,
16 was really twofold. One was we would be criticized
17 for this, we would be questioned about it, the IG may
18 well be criticized about it and why should we take
19 that risk when the transcripts are going to be made
20 public within a matter of days. Can't the White
21 House wait.

22 Q Do you know if Ms. Kerner had any

1 discussions with Mr. Cesca?

2 A Well, they did -- in the conversation that
3 I was a party to, they talked to each other.

4 Q Other than that?

5 A My sense was that they did. It seemed to
6 me when I had them both on the phone together that
7 they had talked.

8 Q Did they tell you that they had spoken
9 about it?

10 A No.

11 Q What gave you the impression that they had
12 spoken about it?

13 A I don't know. The tenor of the
14 conversation I think. I don't really know
15 specifically.

16 Q Can you characterize the tenor of the
17 conversation?

18 A It seemed like they had discussed the
19 matter previously. That's all I can really say. It
20 didn't seem like they were having a first
21 conversation on this issue. They started from a
22 point of knowledge of each other's positions. Maybe

1 that's the way to put it.

2 Q Subsequent to the calls you had
3 individually with Mr. Cesca and Ms. Kerner, you said
4 you had a call with both of them at the same time?

5 A That's my best recollection.

6 Q Do you recall what time that call occurred?

7 A No. That would certainly have been on the
8 Saturday, and I think the transcripts went over to
9 the White House in the late afternoon so it would
10 have been before that, maybe in the morning, maybe
11 early afternoon.

12 Q The call might have been morning?

13 A Late morning, early afternoon probably is
14 my best recollection.

15 Q And what specifically was discussed during
16 that conversation?

17 A Certainly the same conversation again, this
18 time we had them both together. Ms. Kerner, I
19 believe, made her position known to Mr. Cesca. She
20 had already made it known. She responded to mine.
21 Really, the only additional thing was at the end of
22 the conversation, Mr. Cesca agreed that the

1 transcripts could go over to the White House.

2 Q Had he expressed any reluctance about
3 releasing the transcripts at any time during the
4 conversation?

5 A Mr. Cesca is a somewhat hesitant person.
6 Some of that hesitancy might have been reluctance but
7 I witnessed that in him in other conversations which
8 I would not necessarily characterize as reluctance.
9 He did not really voice any reluctance. He agonized
10 a little bit as he thought about it, thought about
11 what Francine and I were saying, but he did not say I
12 think this is really a stupid idea. He didn't, by
13 any means, say I think I agree with Francine that
14 we're going to get a lot of criticism for that. He
15 did not express any concern like that to me.

16 Q Did he voice any opinion at all?

17 A I believe he said that well, the
18 investigation is complete, we've talked to the
19 witnesses, or at least -- I'm not sure whether he
20 said the investigation is complete. I think what he
21 said is we've talked to all the witnesses and the
22 report is done. All these people are on the record,

1 and if the secretary thinks this is appropriate, then
2 I'm not going to second-guess that or whatever. I'm
3 not sure exactly what phrase he used but I remember
4 him referring to the Secretary's opinion as being
5 somewhat important to him.

6 Q Did he specifically say that?

7 A That the Secretary's opinion was important
8 to him?

9 Q Yes.

10 A He said that something -- he referred -- in
11 basically making his decision, it seemed to me he
12 referred to the Secretary's request and the
13 Secretary's position and that seemed to be important
14 to him.

15 Q Did he --

16 A I don't believe he actually said the
17 Secretary's decision is important to me.

18 Q Did he have discussions with anyone from
19 the Secretary's office with regard to this request?

20 A Not that I recall.

21 Q Did Ed Knight have any conversations with
22 Mr. Cesca with regard to this request?

1 A Not that I recall. It's possible, but not
2 that I recall.

3 Q Do you know if he made any phone calls or
4 left any messages for Mr. Cesca?

5 A Not that I recall.

6 Q Would that have been a normal course of --

7 A It wouldn't be unusual. The IG is a
8 Presidential appointee. Mr. Cesca was obviously
9 career, he was acting IG but was a senior level
10 position within the department. The Exec Sec and
11 senior advisor to the Secretary quite often would be
12 in contact with Mr. Cesca. I know because I was a
13 party to one conversation with Mr. Cesca and Ed about
14 sort of the, you know, the general sort of schedule
15 on when could we expect the IG report and when could
16 they get it to OGE.

17 So it would not be unusual or unheard of
18 for Ed to have had that conversation. I just don't
19 recall such a conversation.

20 Q Did you have any discussions with
21 Mr. Knight with regard to this request?

22 A Yes.

1 Q Did that occur during the meetings you
2 referenced earlier?

3 A Yes.

4 Q Was he a part of those meetings?

5 A Yes.

6 Q Outside of those meetings, did you have any
7 discussions with him regarding the request?

8 A At some point I communicated to him that
9 Mr. Cesca had agreed and that the transcripts either
10 were or had gone over to the White House. I don't
11 recall whether I talked to him before or after that.

12 Q Had he requested that you let him know
13 whether or not Mr. Cesca agreed?

14 A He didn't have to.

15 Q Why is that?

16 A Well, because he was part of this group, he
17 had been charged by the Secretary for coordinating
18 the whole process. I kept him informed of everything
19 that developed. He kept me informed as things
20 developed. It was a group of people who were working
21 closely together.

22 Q Did you inform the other members of the

1 group after Mr. Cesca agreed to release the
2 transcripts?

3 A Yes, I did. I don't recall when. I know I
4 talked to Ken about it before I sent them over to the
5 White House. I do not recall what I first talked to
6 Mr. Knight or Mr. McNamara.

7 Q What was the conversation you had with Ken?

8 A I showed him a draft of my letter to
9 Ms. Sherburne and he reviewed that.

10 (Recess.)

11 MR. O'CALLAGHAN: What was the last
12 question, please?

13 (The reporter read the record as requested.)

14 BY MR. O'CALLAGHAN:

15 Q Back on the record. I had asked you about
16 the conversation you had with Mr. Schmalzbach and you
17 said you spoke to him about the draft of the letter
18 that you had written for Ms. Sherburne; is that
19 correct?

20 A Uh-huh, uh-huh.

21 Q And what were the contents of that
22 discussion? Actually, when did that occur?

1 A It would have occurred after my
2 conversation with Mr. Cesca in which he had agreed
3 that the transcripts could go over to the White House
4 and the time that I sent the transcripts to the White
5 House.

6 Q If we can back up for a second, during the
7 conversation you had with Mr. Cesca, were there any
8 discussions about any restrictions that he or anyone
9 at the IG's office wanted put on the transmittal of
10 the transcripts?

11 A Discussions with who, with Mr. Cesca?

12 Q Correct, during your discussion with
13 Mr. Cesca and Ms. Kerner.

14 A I believe we discussed those conditions,
15 yes.

16 Q And what were the conditions that you
17 discussed?

18 A I think I told them that the transcripts
19 would go over to the White House, they would be --
20 actually, I believe whatever is in the July 23 letter
21 is what the discussions were, since that was
22 contemporaneous with my discussions with Mr. Cesca.

1 That might be the easiest way to do that rather than
2 my trying to paraphrase it.

3 Q Fortunately, I think I have a copy of it
4 here.

5 A That's a surprise.

6 MR. PORTNOY: Which letter was that?

7 BY MR. O'CALLAGHAN:

8 Q This is the July 23 letter. Handing you a
9 copy dated July 23 on Department of Treasury
10 stationery, says "by hand" and addressed to Jane
11 Sherburne, Esquire, Office of White House Counsel.
12 Begins with "Dear Jane," and signed by -- it says
13 Stephen J. McHale and there's a signature there.

14 A It says "Steve," that's my signature.

15 Q Have you seen this document before?

16 A Yes.

17 Q When did you first see it in this form?

18 A Well, I saw the original of it on July 23,
19 1994.

20 Q Did you write this letter?

21 A Yes.

22 Q And when did you write it? First, when did

1 you write the first draft of it?

2 A After I had finished my conversations with
3 Mr. Cesca and Ms. Kerner, I had a conversation or
4 conversations, probably a conversation, with
5 Ms. Sherburne.

6 Q Subsequent to the conversation with
7 Mr. Cesca and Ms. Kerner?

8 A Right, and which I said we'd be sending the
9 transcripts over but it will be coming over, on these
10 conditions basically.

11 Q Had you discussed the conditions with
12 Ms. Sherburne previous to that conversation?

13 A I don't recall. I might have.

14 Q Do you recall if you raised the possibility
15 of conditions of the agreement with Ms. Sherburne
16 previous to that conversation?

17 A I don't recall.

18 Q I would like to direct your attention to
19 the second paragraph of the July 23 letter. I'm
20 going to read it into the record. "As we discussed,
21 these transcripts are being provided to you solely to
22 assist you in the preparation for Mr. Cutler's

1 testimony before the House and Senate Banking
2 Committee hearings. You have agreed that the
3 transcripts we are providing to you with this letter
4 will not be disclosed publicly or shown to
5 individuals (other than Mr. Cutler) who may be called
6 as witnesses by the committee until such time as we
7 advise you that this restriction is no longer
8 necessary. Similarly, you have agreed not to
9 disclose these transcripts to counsel for any such
10 individuals. Please let me know immediately if my
11 understanding of our agreement is not correct."

12 Did you discuss these terms in the
13 conversation with Mr. Cesca and Ms. Kerner?

14 A Yes, with the possible exception, I do not
15 recall specifically whether I talked about the
16 agreement not to disclose the transcripts to counsel
17 before any individuals but I do recall the preceding
18 sentence.

19 Q Whose idea was it to put these limitations
20 on use of the transcripts?

21 A These were limitations we were sort of
22 operating under as part of the informal agreement

1 with the Senate Banking Committee's staff that we had
2 talked about, we talked about earlier today. This is
3 just simply implementation of that agreement. I
4 don't know that it was anybody's idea in particular.
5 Actually, I'm not sure exactly who reached that
6 agreement with the Senate Banking Committee staff but
7 I knew of the agreement, I knew that was the terms
8 under which we were operating.

9 Q And at whose suggestion were these terms
10 used for the transmittal of the transcripts to the
11 White House?

12 A I believe mine, but as I said, it was
13 implementation of something else that had been agreed
14 to by other people, so it was not something that I
15 made up.

16 Q Was it your suggestion to use these terms
17 in connection with this specific transmittal?

18 A This is my language, if that's what you're
19 asking.

20 Q Yes. And when did you first decide to use
21 this type of language in an agreement regarding the
22 transmittal of the transcripts to the White House?

1 A Sometime between being tasked with talking
2 to Mr. Cesca and talking to Mr. Cesca, I assume. I
3 knew that these terms were essentially necessary to
4 comply with our agreement with the Senate banking
5 staff, so in transmitting any information to the
6 White House, whatever it might have been, these terms
7 would have been there, transmitting information to
8 any witness. So almost instantaneously -- I don't
9 specifically recall some connection of brain cells
10 that made me think of this, but somewhere in there.

11 Q And was Mr. Cesca receptive to these terms?

12 A I don't recall any real discussion of these
13 terms with Mr. Cesca, other than telling him that if
14 they went over to the White House, if he agreed that
15 the transcripts should go to the White House, this
16 would be part of the package.

17 Q And I guess the question is, did he have
18 any reaction to that specifically?

19 A Not that I recall.

20 Q How about Ms. Kerner, did she have a
21 reaction?

22 A Not that I recall.

1 Q Do you recall if they said it was a good
2 idea or bad idea?

3 A No, Ms. Kerner's sort of general position
4 was that she didn't think they should go over at this
5 stage, they should wait a couple of days, a few days
6 until the transcripts were made public. I don't
7 recall any specific reaction by her or Mr. Cesca to
8 these specific terms.

9 Q Did you show this letter to anyone before
10 it went out?

11 A Ken Schmalzbach.

12 Q And how many drafts of this were written?

13 A I probably made changes of it on my
14 computer but I believe this is the only one that was
15 printed, and my changes would have just been proofing
16 it on the screen and making changes here and there.
17 In terms of printed drafts, I don't believe there was
18 another one. I don't recall one. I don't recall
19 Mr. Schmalzbach making any changes so I don't think
20 there was another draft.

21 Q Did he just review this draft?

22 A That's the best of my recollection. I

1 mean, he might have made changes, but I don't recall
2 any changes that he made.

3 Q Did he view any drafts on your computer?

4 A Not that I recall. I think I recall
5 bringing the letter to him. What I don't recall is
6 whether he made any changes on that letter, and then
7 I incorporated them, but I don't think he did.

8 Q Why did you bring the letter by
9 Mr. Schmalzbach?

10 A He's my boss.

11 Q And you just needed to get approval from
12 him before he sent it out?

13 A Yes and no. I mean, I have the authority
14 to do this, this was my job to do. Ken and I work
15 literally next door to each other. We tend to look
16 at each other's work product, review for each other
17 but also he's my boss and I tend to run things by
18 him. This was obviously a letter that had been
19 discussed with him previously, not the letter but the
20 action had been discussed with him previously. He
21 was available in his office, I showed it to him.

22 Q So he was in working on that Saturday?

1 A Yeah.

2 Q Did you show a draft of this letter to
3 anyone else before it was delivered to the White
4 House?

5 A Not that I recall.

6 Q Have you ever learned why your office was
7 contacted with regard to transmitting the
8 transcripts?

9 A No.

10 Q Have you ever learned why the Inspector
11 General's office wasn't requested directly for the
12 transcripts by the White House?

13 A They were.

14 Q Who was the request made by and who to?

15 A My understanding is it was made by Jane
16 Sherburne and/or Sheila Cheston to Francine and/or
17 the IG investigators and maybe to the RTC IG people.

18 Q And was that one request or more than one?

19 A I'm not sure. I know there was a request.
20 It may have been repeated.

21 Q What's the request that you are aware of?

22 A It's early July. My best recollection is

1 right about July 5.

2 Q July 5.

3 A But it may have been repeated.

4 Q Are you aware of any request that was made
5 on July 22 or July 23 specifically to RTC IG or
6 Treasury IG?

7 A No, I don't recall any such request. It's
8 possible.

9 Q Did either Mr. Cesca or Ms. Kerner comment
10 on the fact that your office had been contacted for
11 the transcripts?

12 A No.

13 Q So this wasn't a surprise to you?

14 A No.

15 Q After you finished the draft of the letter,
16 that document 6877, what happened next with regard to
17 the transcripts and the letter?

18 A I signed the letter. Someone on my staff
19 had made a copy of a set of the transcripts or we had
20 an extra set. I mentioned earlier we had made I
21 think a couple of working sets. I'm not sure whether
22 we made another set or not, but we assembled a

1 package of the transcripts with this letter and
2 someone on my staff walked it over to the White
3 House.

4 Q Who on your staff walked it over?

5 A It would have either been David Dougherty
6 or Peter Rittling. We might have had a secretary in
7 that day. I'm not sure. It was a Saturday so we
8 were low staffed.

9 Q Was it just one person that brought them
10 over?

11 A I think so. I think they all fit in a box.

12 Q And how far is your office -- well,
13 actually where exactly were they delivered to?

14 A They would have been delivered to the Old
15 Executive Office Building, on a Saturday to the 15th
16 Street entrance. The 17th Street entrance, excuse
17 me.

18 Q And how far is that from your office?

19 A Saturday, because the doors are closed, you
20 have to go out the 15th Street entrance of the
21 Treasury Department, around in front of the White
22 House to the 17th Street entrance of the Old

1 Executive Office Building, so it's, I don't know,
2 1000 yards?

3 MR. BUCKLES: 2-1/2, three blocks.

4 BY MR. O'CALLAGHAN:

5 Q Who specifically were they delivered to?

6 A I don't know.

7 Q What were the instructions you gave with
8 regard to the delivery?

9 A We would have made some arrangements with
10 Jane Sherburne to accept them or to have them
11 accepted at the Old Executive Office Building. On a
12 Saturday you have to go through -- the normal process
13 for delivering mail and things doesn't work, so I
14 assume Jane would have made arrangements for herself
15 or one of her paralegals or someone else to go down
16 and collect them from the guard's desk.

17 Q Do you recall whether you talked to
18 Ms. Sherburne, and if you've already testified to
19 this, let me know, but whether you talked to her
20 after Mr. Cesca gave the go-ahead to hand over the
21 transcripts?

22 A Yes.

1 Q And what was that conversation?

2 A It was to tell her that Mr. Cesca had
3 agreed and to discuss this letter. As this letter
4 reflects, we discussed these conditions. I may even
5 have read her a draft of the letter at some point. I
6 think I did.

7 Q And what was her initial reaction when you
8 told her Mr. Cesca had agreed?

9 A She was glad.

10 Q And what was her reaction to the imposition
11 of restrictions on the use of the transcripts?

12 A Because this is essentially also what I
13 understood she was going to use them for -- I think
14 this was just -- I don't recall any specific reaction
15 of surprise. I think -- or anything. I mean, I
16 think it was sort of what she would have expected.

17 Q She was amenable to it and didn't have any
18 problems with it?

19 A No. Actually, I do recall something.
20 While I had understood that this was going to be used
21 to prepare Mr. Cutler's testimony, she actually
22 suggested to me that we make it clear that Mr. Cutler

1 himself could see the transcripts, and we did include
2 that statement in there.

3 Q That was one change she made to it?

4 A I think it was a clarification.

5 Q But that's a suggestion that she made to
6 the text?

7 A Right, I recall that discussion.

8 Q Did she have any other input to the text of
9 the letter?

10 A No, not that I recall. She may have but I
11 don't recall.

12 Q Did she call you immediately to let you
13 know whether or not your understanding of the
14 agreement was not correct?

15 A No, she did not.

16 Q Did you call her to find out if your
17 understanding was correct or rather, not correct?

18 A Ms. Sherburne and I talked at some point on
19 the Sunday, I believe --

20 Q Would that be the 24th?

21 A Right. And she did not voice any concern
22 to me about the letter. As I said, I believe I read

1 the letter to her so it doesn't really surprise me,
2 that's a fairly consistent line at the end of the
3 letter.

4 Q Have you used that line before in other
5 letters?

6 A Yes.

7 Q What was the conversation you had with her
8 on the following Sunday?

9 A I don't really recall. It might have been
10 about -- let me think. We had some discussion at
11 some point about Mack McLarty's transcript because we
12 didn't have that yet, and we talked about when we
13 might get that. That may have been on the Sunday we
14 had that conversation.

15 Q When did you receive that transcript?

16 A I'm not sure. Probably on the Sunday or
17 the Monday. It was fairly soon after.

18 Q Was that sent over to the White House as
19 well?

20 A I don't recall.

21 Q Were transcripts that weren't available on
22 the 23rd sent over to the White House later?

1 A There were only two that I know of. One
2 would be Mack McLarty's. The other was Gene Ludwig
3 which we didn't, on the 23rd, know was going to be
4 taken.

5 Q That was a deposition that occurred later?

6 A Right. The transcripts, redacted
7 transcripts, were provided to the White House
8 sometime the following week, and all the transcripts
9 were provided at that point so at that point the
10 McLarty and Ludwig transcripts would have gone over.
11 I don't believe there were any redactions to those,
12 so those would have been unredacted transcripts would
13 have gone over at that point. They may have gone
14 over before that.

15 Q Have you ever learned that the transcripts
16 were used in a way that would have violated the
17 agreement that appears on the July 23rd letter?

18 A No.

19 Q Did you ever learn or ever hear that
20 Mr. Cutler acknowledged that the transcripts were
21 used to identify discrepancies in the recollections
22 of Presidential aides before the Congressional

1 hearings?

2 A I have seen that reported. I've never
3 heard that from Mr. Cutler.

4 Q Where have you seen that reported?

5 A In that AP story that you have in front of
6 you.

7 Q I'll show you a copy of the AP story. It's
8 not marked as an exhibit. Just for purposes of
9 identification today, I have put an M1 in the bottom
10 right-hand corner of the first page. It's a
11 three-page document, printout of an Associated Press
12 story that came out May 5, 1995. The headline is
13 "Confidential Whitewater Depositions used with
14 Witnesses." It goes on for three pages. Take a
15 moment to review it and let me know when you've had a
16 chance to review it.

17 (Witness reviewed the document.)

18 MR. O'CALLAGHAN: Off the record for a
19 second to allow counsel a chance to review the
20 document.

21 (Discussion off the record.)

22 BY MR. O'CALLAGHAN:

1 Q Have you had a chance to review what I've
2 shown you that's marked as M1?

3 A Yes.

4 Q Which is a May 5 AP story. Is this one of
5 the news stories you reviewed in preparation for the
6 deposition?

7 A Yes, and I may have reviewed it before
8 today.

9 Q In this story, there are a few statements
10 that are attributed to Mr. Cutler, and would you
11 consider the agreement to have been violated if White
12 House lawyers used the transcripts to confront White
13 House officials about their recollections while
14 preparing them for testimony?

15 A I don't actually think that's what the
16 story says.

17 Q It says here also that the witnesses
18 weren't told what the source of the conflict was.

19 A I don't think it says while preparing for
20 their testimony.

21 Q Okay --

22 A The quote is attributed to Mr. Cutler.

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1 Q Let me just ask you as a general
2 proposition. As a general proposition, if the
3 transcripts had been used by the White House before
4 the Congressional hearings in a manner such that they
5 were used to -- information contained in them were
6 used to confront witnesses about their recollection
7 of certain events, would that have been a violation
8 of the agreement that you entered into?

9 A No.

10 Q And why is that?

11 A Ms. Sherburne was preparing Mr. Cutler's
12 testimony. Mr. Cutler's testimony was to be
13 reportive of his review.

14 MR. O'CALLAGHAN: Off the record, please.
15 (Discussion off the record.)

16 BY MR. O'CALLAGHAN:

17 Q Do you recall the question that was posed
18 or would you like it read back or I could reformulate
19 it again.

20 A You asked me if -- why don't you
21 reformulate it. Let's start again.

22 MR. O'CALLAGHAN: Counsel, please correct

1 me if I don't do it properly.

2 BY MR. O'CALLAGHAN:

3 Q I believe the question that I asked you was
4 whether if the White House had used the information
5 that was contained in the transcripts to confront
6 witnesses with their recollection of the events
7 regarding the White House-Treasury contacts, whether
8 that would have been a violation of the agreement
9 that is memorialized in the July 23 letter. I think
10 that stated it better than I did the first time.

11 A Right. No. If Ms. Sherburne or the people
12 who were assisting Mr. Cutler to prepare for his
13 testimony, Ms. Sherburne, Ms. Cheston, had made
14 that. You attributed it to the White House which I
15 found a little confusing. But assuming that, as I
16 think that's what is said here, is that Mr. Cutler's
17 staff, which is a small group of people within the
18 White House, used it to confront witnesses about
19 discrepancies in what Mr. Cutler and his staff had or
20 were learning in the course of their review, that
21 would not be inconsistent because that was --
22 Ms. Sherburne was preparing Mr. Cutler's testimony.

1 They had, to the best of my recollection,
2 talked to the people they were going to talk to.
3 They may have had one or two, but my understanding is
4 they had finished their review, our IG had finished
5 his review, Mr. Cutler was going to testify on the
6 27th, Ms. Sherburne was drafting his testimony. That
7 testimony was going to be the report of his review.
8 And she wanted to look at the transcripts to review
9 those transcripts to see if there were any areas that
10 they had not explored. If there were any
11 discrepancies or something that they needed to ask
12 further, to look at further.

13 So as part of that transcript, that
14 testimony preparation, I guess if the transcripts had
15 raised questions, it would not be unexpected that
16 they would go back to somebody for clarification.

17 Q And if they had told them that they had
18 heard other reports as a basis for the questioning?

19 A I don't really perceive that as a problem.
20 It would be sort of almost assumed on the basis of
21 them questioning that they had heard other reports
22 but if they actually said we've heard other reports,

1 I don't think that's a problem.

2 Q And I guess there's a quote attributed to
3 Mr. Cutler here which says "I think it was perfectly
4 appropriate to say that this is your testimony to
5 us. There is conflicting testimony. Are you sure
6 that's what you said?" Would that be an appropriate
7 use of the information in the transcripts?

8 A I believe so. The time frame is somewhat
9 important but I believe it would have been
10 appropriate almost at any time but certainly after a
11 certain point before people testified, the White
12 House had the transcripts, they were public. The
13 trouble is this article doesn't talk about time
14 frames. It clearly -- at some point these
15 transcripts were public, and there really clearly
16 would be no problem at that point.

17 I don't really -- I think that would have
18 been consistent with the agreement, as long as what
19 they were doing was preparing Mr. Cutler's testimony,
20 and his testimony was the report. So to the extent
21 that they are preparing his testimony and using the
22 information they gained from the transcripts to plug

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1 holes or fill gaps or whatever in his -- sort of his
2 own internal inquiry, that would be appropriate.

3 Q How about if it was used to confront
4 witnesses before they were to testify before
5 Congress?

6 A As part of the witness's preparation?

7 Q Yes.

8 A No.

9 Q That would have been a violation?

10 A Because this says, "Shall be used solely
11 for preparation of Mr. Cutler's testimony," although
12 as I said, at some point later, the transcripts were
13 public.

14 Q But if it was before they were public?

15 A This says until we release the condition.
16 The condition was imposed here because of our
17 agreement with the Senate Banking Committee staff.
18 That agreement expired by its terms on Monday, July
19 25 or 26, somewhere around there. I don't know
20 whether -- I do not know whether the agreement was --
21 whether that condition was specifically -- whether we
22 called the White House counsel and said you're free

1 to do whatever you want with those transcripts, but
2 that could have happened.

3 Q Okay, thanks. I would like to show you a
4 document Bates stamped 011803.

5 MR. PORTNOY: Is this a new subject or same
6 subject?

7 MR. O'CALLAGHAN: Kind of the same subject
8 possibly. This will be a quick one.

9 BY MR. O'CALLAGHAN:

10 Q It's a handwritten note at the top of it,
11 first line is reasonably difficult to read, which is
12 a product of the duplication process somewhere along
13 the way. Do you recognize the handwriting on that
14 document?

15 A Yes.

16 Q Whose handwriting is that?

17 A Jean Long, she's a secretary in my office.

18 Q Have you seen this document before?

19 A Yes.

20 Q When did you first see it?

21 A October of 1994.

22 Q What does this document refer to?

1 A Following the hearings, we had gotten some
2 supplemental questions from the committee, I believe
3 from Senator Bond. We were drafting answers to
4 those. The Secretary and Mr. Knight were out of
5 town. One of the answers required -- potentially
6 required discussion of whether the Secretary had
7 actually spoken to Mr. Cutler about the transcripts.
8 I needed some clarification on that. I asked --

9 Q Who is this note directed to?

10 A To me. I had asked Dennis to relay my
11 questions to Ed.

12 Q That's Dennis Foreman?

13 A Dennis Foreman. And this is Dennis's
14 response, which was relayed back to me through my
15 secretary.

16 Q Okay. The second sentence, I believe, and
17 tell me if I'm wrong, reads "Ed has decided not to
18 raise the Secretary's anxiety level about the Cutler
19 call, so no more hold." What does that refer to?

20 A I think what it says is Ed decided not to
21 raise that question with the Secretary and we should
22 just go with the draft that we had, which was written

1 in such a way as -- does not call forth for that
2 answer.

3 Q So it was not to ask the Secretary about
4 whether or not he had actually had a conversation
5 with Cutler with regard to release of the
6 transcripts?

7 A During this process, I believe while I was
8 waiting for Ed to get back, I had looked into that,
9 at the hearing transcript testimony where the
10 Secretary talked about that call, and had more
11 information about it than I probably had had
12 previously, so yeah, it was decided that this was
13 sort of overcome by events essentially.

14 Q I would like to show you one more document
15 on this question, it's 11155. It appears to be an
16 E-mail; is that correct?

17 A Yes.

18 MS. STERGIS: Hold on a minute.

19 MR. O'CALLAGHAN: Sure.

20 (Pause.)

21 BY MR. O'CALLAGHAN:

22 Q Have you seen this document before?

1 A Yes, I wrote it.

2 Q And just for the record it's an E-mail from
3 Steve McHale to Foreman, D., date of 10-4-94,
4 "question for Ed." Does this E-mail deal with the
5 same subject that we just discussed?

6 A Yes. This 11803 is a response to 11155.

7 Q So the E-mail came before the note; is that
8 correct?

9 A Yes.

10 Q It says here "I think Ed raised the issue
11 with the Secretary on his own." What does that refer
12 to?

13 A Even then we were trying to reconstruct the
14 chronology, and at that time that was my best
15 recollection of whether the Secretary -- it was
16 unclear to me whether the Secretary had had that
17 conversation with Mr. Cutler. As I said, in looking
18 at the testimony at the hearing, it appeared that he
19 testified that he had had such a conversation. I
20 knew I had received the call from Ms. Sherburne in
21 trying to answer Senator Bond's questions. I was
22 just trying to clarify the chronology of what

1 happened when a little bit, and that's what this is
2 about.

3 At the time I guess my recollection was
4 that Ed had raised the issue with the Secretary
5 rather than Mr. Cutler talking to the Secretary.
6 Q Why don't we take a quick break here and I
7 only have two or three more questions and then I'll
8 give you the floor.

9 MR. PORTNOY: Great.

10 MR. O'CALLAGHAN: Maybe one question.
11 (Recess.)

12 BY MR. O'CALLAGHAN:

13 Q Back on the record.

14 With respect to the subject we were just
15 discussing, whether or not Secretary Bentsen had
16 spoken directly with Mr. Cutler with regard to
17 request of the transcripts, I want to show you a
18 document Bates stamped -- very difficult to read -- I
19 think it's 016687, it's a one-page document, looks
20 like it's copied from a spiral notebook. Do you
21 recognize the writing?

22 MS. STERGIS: Hold on just a second,

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1 please.

2 MR. O'CALLAGHAN: Sure.

3 (Pause.)

4 BY MR. O'CALLAGHAN:

5 Q Do you recognize the writing on the
6 document?

7 A Yes.

8 Q Whose writing is it?

9 A Ken Schmalzbach's.

10 Q It says, and correct me if I'm wrong, looks
11 like it says "for telecon, ESK, 10-24." And then it
12 says "does LB think LC asked him for transcripts?"
13 Did you participate in a telephone conversation on
14 October 24 regarding whether or not Mr. Cutler and
15 Mr. Bentsen had talked about the transcripts?

16 A Not that I recall.

17 Q Do you know if Mr. Schmalzbach was involved
18 in that conversation?

19 A Not that I recall.

20 Q Does looking at this document refresh your
21 recollection as to whether a conversation took place
22 on that subject?

1 A We had answered the Bond questions on
2 October 21. I have no idea what this is about.

3 Q Okay, thanks. Mr. McHale, how often do you
4 typically use your E-mail during the course of a
5 week?

6 A 100, 150 times.

7 Q How about during the time period March
8 through August '94?

9 A Probably less, actually. The Treasury is
10 becoming more and more automated. More and more
11 people are coming on to our LAN. The old EIS system,
12 which that was off of, was kind of clunky to use,
13 maybe 30 to 40, although in that time frame, maybe
14 even less because I was primarily working on matters
15 related to the hearings, et cetera. So I wouldn't
16 have been communicating generally with my clients or
17 with the kinds of people I communicated with on
18 E-mail, and we were having meetings with Ken and Bob
19 and Ed on a fairly frequent basis, so I would expect
20 probably considerably less in that period.

21 Q Did you -- during the time period, the time
22 period March through August '94, did you have E-mail

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1 communications with Ms. Kerner?

2 A Not that I recall.

3 Q Did she ever send you E-mails?

4 A Possibly. I may have sent her an E-mail,
5 she might have sent me an E-mail, but I don't recall.

6 Q What was your primarily method of
7 communication with Ms. Kerner?

8 A Telephone or foot. Her office is upstairs.

9 Q How about E-mails concerning the White
10 House-Treasury contacts during that time period?

11 A With who?

12 Q With anyone?

13 MS. STERGIS: I'm sorry, what is the
14 question?

15 BY MR. O'CALLAGHAN:

16 Q How many E-mail communications?

17 A I tried to answer that. In this time
18 frame, really the only people who were working on
19 this issue within the general counsel's office were
20 primarily Bob McNamara, Ken Schmalzbach, Ed Knight
21 and myself. We met on that several times a day so I
22 doubt that I had very many E-mail on this subject.

1 Q Do you know if there are any E-mails that
2 you sent during the time period on this subject that
3 were unable to be retrieved in the document
4 production?

5 A I don't recall any. I don't recall any.
6 That were unable to be retrieved? I don't recall
7 any. I don't recall any specific E-mails so I'm
8 having trouble recalling. It's hard for me to recall
9 an E-mail that I don't recall, whether it was
10 retrieved. This one was retrieved, the one you just
11 showed me a minute ago.

12 Q Do you know if there were any other E-mails
13 retrieved with regard to this issue?

14 A Which issue? That issue (indicating)?

15 Q The general issues that we're dealing with
16 today with regard to --

17 MS. STERGIS: At what time?

18 MR. O'CALLAGHAN: Excuse me? I'm sorry, if
19 you want to clarify.

20 MS. STERGIS: Retrieved at what time?

21 BY MR. O'CALLAGHAN:

22 Q That you retrieved in -- I guess at any

1 time in hard copy.

2 A We had several document requests about the
3 matters that are the subject in part of this inquiry,
4 not all of them from the Congress. In responding to
5 each of those document requests, not only did I
6 search the files in my office, I searched my computer
7 hard drive and I searched my EIS account, to the
8 extent that I had access. EIS account to some extent
9 dumps E-mails off after a while.

10 Q What is EIS?

11 A Executive information system. It's the old
12 E-mail system as opposed to the WordPerfect office
13 system we have now. We have both parallel. I
14 searched the WordPerfect office system, I searched
15 EIS, whatever computer files I had access to from my
16 office. I searched my files. Whatever I found that
17 was responsive was turned over to the attorneys who
18 were responsible for making whatever productions were
19 being made.

20 Q And do you recall how many E-mails that you
21 pulled regarding this subject?

22 A No, I do not. I do not.

1 Q Mr. McHale, did you ever hear reports that
2 transcripts related to the depositions taken by the
3 two IG offices were sent over by either the Treasury
4 IG's office or anyone in a piecemeal fashion over the
5 course of the time that they were being produced?

6 MR. PORTNOY: Sent over to where?

7 BY MR. O'CALLAGHAN:

8 Q To the White House, I'm sorry.

9 A Well, yes. They were given to individual
10 witnesses at the White House starting July 18 by the
11 Treasury IGs.

12 Q And other than to specific witnesses, and
13 other than the delivery that was made by your office,
14 are you aware of any other deliveries to the White
15 House of transcripts?

16 A I believe there was a delivery to the White
17 House of the redacted transcripts on about July 30
18 and it is possible, although I'm not certain, that
19 the McLarty and Ludwig transcripts were delivered. I
20 know I agreed to do that when they were done but I
21 don't actually recall doing that.

22 Q Are you aware of any delivery of unredacted

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1 transcripts other than the ones we've discussed?

2 A Other than the July 23 one?

3 Q Correct.

4 A No. I'm sorry, the transcripts that the
5 IGs delivered to the White House during the week of
6 July 18 to the individual witnesses were not
7 redacted.

8 MR. O'CALLAGHAN: No further questions at
9 this time.

10 EXAMINATION

11 BY MR. PORTNOY:

12 Q Good afternoon, Mr. McHale. My name is Jim
13 Portnoy, counsel for the Democratic staff on the
14 special committee and I have a few questions and
15 follow-ups as well.

16 A Sure.

17 Q Outside the context of the investigation
18 that was conducted by the Inspector General's office
19 into White House and Treasury contacts, do you
20 routinely interact with the Inspector General's
21 office?

22 A Yes.

1 Q Could you provide some details, please,
2 about the nature of your interaction?

3 A Yes. It's a number of different ways. The
4 IG conducts investigations into activities of the
5 Department of the Treasury. Some of those are at the
6 request of departmental officials, some of those are
7 initiated by the IG. Those investigations at times
8 require legal opinions on issues that arise on areas
9 that might be within our area of responsibility, the
10 IG counsel would ask for that kind of assistance.

11 Where there's an investigation or an audit
12 that's been requested by management, we will
13 sometimes talk to the IG on behalf of the Assistant
14 Secretary or others about the kinds of things we
15 would like investigated or audited and may work with
16 them on looking at reports. We support the IG's
17 office. The IG's lawyer staff is quite small. We
18 have more experience on EEO or MSPB cases, we will
19 sometimes backstop them on that. I will have one of
20 my lawyers represent them at the hearings. That kind
21 of interaction.

22 Q Let's focus on investigations. Would it be

1 normal for your office to be kept apprised of
2 investigations during their conduct?

3 A It has occurred. I have no idea how many
4 investigations the IG does and most of them involve
5 the Bureaus. We have consulted with them about the
6 conduct of investigations involving -- I have two
7 sets of clients really, two sort of ways of looking
8 at my clients. One is a sort of departmental level,
9 assistant secretary management clients, the others
10 are some people at a bureau level from headquarters
11 at Department of Treasury, the 1400 people that work
12 there.

13 When the IG is investigating activities
14 within DO, we have at times been consulted or advised
15 of the state of those investigations, particularly
16 where those investigations or reviews have been
17 requested by my clients.

18 Q So you wouldn't describe it as unusual that
19 you would know something about the conduct of an
20 investigation while it was ongoing?

21 A No, no. Certainly don't know about all of
22 them but I know about some of them.

1 Q Would you be more likely to know about high
2 profile investigations?

3 A I'm not sure what you mean by "high
4 profile." I would be more likely to know about an
5 investigation that was requested by one of my clients
6 than one that the IG had initiated on their own.

7 Q Would you be more likely to know about an
8 investigation that consumes a substantial portion of
9 the IG's resources?

10 A I would know that the investigation was
11 going on, probably because that's the kind of
12 situation where we might be backstopping the IG
13 counsel on other matters; more likely to be
14 backstopping the IG counsel on other matters.

15 Q Would you consider your knowledge of the
16 IG's investigation into White House-Treasury contacts
17 to have been routine?

18 A It was not unusual. Most Treasury IG
19 investigations we have nothing to do with because
20 they don't involve us, but I wouldn't think that our
21 knowledge of this one was particularly unprecedented.

22 Q Did you have a greater involvement in this

1 investigation than you do in the usual investigations
2 in which you're involved? I appreciate that there
3 are two categories, there are investigations in which
4 you have no involvement and investigations in which
5 you have some involvement. I would like you to
6 compare this.

7 A I would have to say that we had more
8 involvement in this one, probably because it was one
9 that was specifically requested by the Secretary and
10 at the end of the day, we were responsible for
11 advising the Secretary about what he should do about
12 it. So this was really something that we had a very
13 high level of interest in, because we were going to
14 have to rely on this investigation for our advice to
15 the Secretary.

16 Q Did you ever meet or speak with any of the
17 front-line investigators during the course of this
18 investigation?

19 A No, I spoke to Ms. Kerner. And when I say
20 that, I say that because I think she may have been
21 involved in some of the interviews and so I'm not
22 sure how you define front-line investigators, but I

1 spoke with Ms. Kerner.

2 Q You don't know if Ms. Kerner conducted any
3 interviews?

4 A No, I do not. In fact, actually as I think
5 about it a bit more, I don't believe her name was on
6 any of the transcripts.

7 Q When you have contact with the Inspector
8 General's office, is that contact normally conducted
9 through the counsel to the Inspector General?

10 A Yes.

11 Q And did you have any contact with anyone in
12 the Inspector General's office other than Mr. Cesca
13 or Ms. Kerner in this investigation?

14 A I believe somebody in the investigative
15 staff came by to pick up a set of documents, but
16 aside from that, no.

17 Q Would those have been Treasury Department
18 documents that were pertinent to the investigation?

19 A Yes, yeah, these were documents that we had
20 gathered in response to various document requests
21 from various groups of people, including the IG.

22 Q So this was not a contact that you

1 initiated?

2 A Oh, it might have been me saying the
3 documents are ready, but no.

4 Q But the subject of your interaction was one
5 raised by the Inspector General?

6 A Yes, yes.

7 Q Or the Inspector General's office?

8 A Right, right, right. I would normally
9 communicate with the Inspector General through the
10 Inspector General's counsel, sometimes with the
11 Inspector General himself or herself.

12 Q Were you involved in compiling documents
13 for the Inspector General?

14 A Yes.

15 Q Were you involved in assisting in the
16 scheduling of witnesses?

17 A I think the only one I was involved in was
18 the Secretary. Most of those interviews occurred
19 while I was out of the country.

20 Q Was your office involved in the scheduling
21 of witnesses?

22 A I believe so. I believe so with some of

1 them. I'm not entirely sure. I think Ken had some
2 involvement in that, just making sure that people
3 were able to be in touch. This was a bit of a
4 vacation period as well, and I think Ken did some
5 there.

6 Q Would it be fair to say that your office
7 helped coordinate the scheduling of witnesses?

8 A That might be an overstatement. Assisted,
9 perhaps, in getting people in touch with each other.

10 MR. O'CALLAGHAN: Jim, just for clarity, is
11 it all witnesses or just witnesses in the Department
12 of Treasury?

13 THE WITNESS: That would be limited to the
14 Department of Treasury, yes, Treasury employees.

15 BY MR. PORTNOY:

16 Q I believe you said Mr. Schmalzbach played a
17 role in putting witnesses together?

18 A I believe so. That was my understanding
19 from what he was telling me while I was in Ireland,
20 that he had assisted in getting them together with
21 witnesses and witnesses' counsel. We had private --
22 many of the witnesses had private counsel. We had

1 had contact with the private counsel and I think he
2 arranged to make sure that the private counsel and
3 the IG investigators got together.

4 Q Would the process of putting together
5 witnesses, private counsel and the Inspector General
6 have permitted Mr. Schmalzbach to develop the
7 information to create for himself a list of probable
8 witnesses?

9 A No, I suspect any of us could have done
10 that, but I don't think that that particular process
11 would have done that.

12 Q Could you have created --

13 A The Treasury witnesses?

14 Q Allow me to finish my question, sir.

15 A Sorry.

16 Q Could you have created from your own
17 knowledge a list of Treasury witnesses?

18 A Yes.

19 Q Could Mr. Schmalzbach have done so?

20 A I would expect so.

21 Q So you wouldn't have needed to confer with
22 the Inspector General's office in order to compile

- 1 such a list?
- 2 A No.
- 3 Q So if a list existed in some form in the
- 4 Office of General Counsel, it wouldn't necessarily
- 5 have originated outside your office?
- 6 A No.
- 7 Q You're not aware of any such list, though,
- 8 are you, sir?
- 9 A No.
- 10 Q You testified that your contact with the
- 11 Inspector General's office was primarily through
- 12 Ms. Kerner?
- 13 A Yes.
- 14 Q Was this a regular part of her job?
- 15 A Yes.
- 16 Q Did you have similar kinds of interaction
- 17 in other matters?
- 18 A Yes.
- 19 Q So this wasn't unique to the White House
- 20 Treasury investigation?
- 21 A By no means.
- 22 Q Was it particularly different from any

- 1 other investigation?
- 2 A I guess you could say in terms of degree.
- 3 It is rare that the Secretary himself specifically
- 4 requests an investigation and rare that the Secretary
- 5 is going to be the decisionmaker and extremely rare
- 6 that I am going to be one of the three lawyers giving
- 7 the advice to the Secretary. Normally that would be
- 8 being done by the general counsel and deputy general
- 9 counsel.
- 10 Therefore, this investigation, because it
- 11 was really the factual record on which we were going
- 12 to be relying, both to advise the Secretary about
- 13 what to do with the deputy general counsel and the
- 14 general counsel, and to prepare him -- I'm sorry, the
- 15 Deputy Secretary and the general counsel, and to
- 16 prepare him for his testimony, that investigation was
- 17 obviously an important one to me, so yes, the
- 18 interaction was a little higher degree, I would say.
- 19 Q Would you say the pressure was ratcheted up
- 20 by the Secretary's involvement?
- 21 A Yes, the pressure was ratcheted up on us, I
- 22 would say. Normally that interaction would be with

1 the general counsel and deputy general counsel. It
2 is extremely unusual that they would be essentially
3 sidelined in a process like that, and that we would
4 be involved in that level of discussion directly.

5 Q So you felt strongly that the investigation
6 needed to be accurate?

7 A Yes.

8 Q Complete?

9 A Yes.

10 Q Thorough?

11 A Yes.

12 Q In your estimation, was the investigation
13 accurate?

14 A If they had accepted all of my edits, yes.
15 (Laughter.)

16 Q Would you say that it was thorough?

17 A It appeared to be fairly thorough. Every
18 lawyer would have asked questions differently than
19 the IG investigators did, but it appeared to be
20 thorough.

21 MR. PORTNOY: Excuse me one second.

22 MR. O'CALLAGHAN: Off the record.

1 (Discussion off the record.)

2 BY MR. PORTNOY:

3 Q I believe you testified earlier that your
4 role as a liaison to the Inspector General's office
5 in this investigation was part of a broader role with
6 respect to the whole issue of White House Treasury
7 contacts?

8 A Yes.

9 Q And that you were responsible in part for
10 preparing the Secretary's Congressional testimony?

11 A That's right.

12 Q And you were responsible for advising the
13 Secretary with respect to the kinds of personnel
14 decisions that he might have to make as a consequence
15 of the investigation?

16 A That's right.

17 Q Were there any other facets of your
18 involvement?

19 A Well, I was responsible for overseeing the
20 document productions in response to the Independent
21 Counsel investigation and in assembling documents for
22 response to the House and Senate Banking Committee's

1 requests and I participated in the preparation of
2 Dennis Foreman and Ben Nye.

3 Q A substantial portion of your time during
4 the period from March to August was spent involved in
5 this matter?

6 A Yeah. It was a little episodic, but
7 certainly in early March it was very -- a lot of time
8 and a little bit in -- increasing from May on as we
9 went through the process, until in June it was very
10 much full-time, more than full-time, and in July it
11 was around the clock until after the hearings.

12 Q During the course of your involvement in
13 this investigation, you interacted with a number of
14 high-ranking department officials?

15 A Yes.

16 Q Mr. Schmalzbach?

17 A Yes.

18 Q Mr. Knight?

19 A Mr. Knight, the Secretary.

20 Q Did any of those ranking department
21 officials ever ask you to try and direct the conduct
22 of the investigation?

1 A No.

2 Q Did any of those ranking department
3 officials ever suggest to you that you should try to
4 limit the scope of the investigation?

5 A No, just the opposite. The Secretary had
6 made clear through Mr. Knight and in his public
7 statements that he hoped for a thorough, complete
8 investigation and by his direction to us, that we not
9 do any of the kind of normal factual development that
10 lawyers do, actually I guess went farther in terms of
11 making sure we didn't interfere with anything than
12 would be normal.

13 Q Did anybody ever suggest to you what the
14 results of the investigation ought to be?

15 A No. We didn't know what the results of the
16 investigation were going to be or what IG's opinion
17 was. The IG investigation is essentially a factual
18 statement, doesn't really have results, just has,
19 these are the facts. The only real analysis and
20 conclusions are in the OGE document, and we -- not
21 only did we not suggest to OGE, there was certainly
22 no way we could suggest to OGE what their conclusions

1 would be and we didn't know what they would be until
2 we got the document on July 30 or 29 or whenever it
3 was.

4 Q I believe you testified that the purpose of
5 the investigation, as you understood it, was at least
6 in large part to permit Secretary Bentsen to analyze
7 the conduct of his subordinates and to make personnel
8 decisions?

9 A That's right.

10 Q Are you aware of any other purpose?

11 A I mean, we knew at that point that there
12 was going to be testimony and certainly we knew that
13 almost from the outset that there were going to be
14 Congressional hearings on this, and the Secretary --
15 we certainly hoped that the IG report and the OGE
16 report would be useful to us in the preparation for
17 those hearings since we weren't going to be able to
18 do anything else on our own.

19 Q But you never heard anyone suggest that the
20 results of the -- or findings of the investigation
21 could be used to homogenize testimony, for example?

22 A Oh, no, huh-uh.

1 Q Or to mislead the Congress in any way?

2 A No. People had been under oath at least
3 three times by the time we ever saw the transcripts.
4 It would have been a bit late.

5 Q You indicated that there's been a long
6 series of discussions in your office regarding the
7 relationship of the Office of General Counsel and the
8 Inspector General's office and in particular --

9 A Yes.

10 Q -- the role of the counsel to the Inspector
11 General?

12 A Uh-huh, yes.

13 Q This has been an ongoing concern?

14 A Yeah. It's an ongoing issue within the IG
15 community generally.

16 Q You've been at the Treasury Department for
17 about five years?

18 A Just over. Time flies.

19 Q During your time at the Treasury
20 Department, have you ever encountered a situation
21 where you had reason to question the performance of
22 the counsel to the Inspector General?

1 A No.

2 Q Have you ever had reason to believe that
3 the counsel to the Inspector General --

4 A I take that back. I had a concern about
5 the performance of a former Inspector General counsel
6 involving a matter I was in, I didn't think her
7 advice was appropriate.

8 Q Have you ever had reason to question the
9 performance of Ms. Kerner?

10 A No.

11 Q Does Ms. Kerner have any clients in the
12 Treasury Department other than the Inspector General
13 or did she when she functioned as counselor?

14 A The Inspector General and the Inspector
15 General's staff in the Office of Inspector General.

16 Q Did you ever have any reason to believe
17 that Ms. Kerner exhibited any divided loyalties with
18 respect to her obligations to the Inspector General?

19 A No.

20 Q Did you ever have any reason to believe
21 that she considered herself to have any client other
22 than the Inspector General?

1 A No.

2 Q What was the process by which Ms. Kerner
3 received a performance rating?

4 A My understanding of that is that the deputy
5 general counsel actually does the rating for the
6 Inspector General counsel, but talks to the Inspector
7 General -- and maybe other members of the Inspector
8 General's staff, but talks to the Inspector General
9 in the process of preparing that.

10 In this particular instance, though, that
11 agreement that we talked about earlier, the June 27,
12 I think it was, agreement actually modifies that
13 somewhat.

14 Q In your time at the Treasury Department,
15 have you ever been aware of a performance evaluation
16 for a counsel to the Inspector General being affected
17 either positively or negatively for improper reasons?

18 A No, the only input I know of is the input
19 by the Inspector General. Aside from that, no.

20 Q Let me ask it a slightly more direct way.
21 Are you aware of any instance in which anyone has
22 tried to influence the job performance of a counsel

1 to the Inspector General by using their performance
2 appraisal as a wedge?

3 A No.

4 Q Do you have any reason to believe that
5 anyone ever indicated to Ms. Kerner that her
6 performance appraisal would be affected by the degree
7 of independence she demonstrated in connection with
8 this investigation?

9 A No, Ms. Kerner obviously raised the issue
10 of that agreement with the general counsel. And
11 you'll have to ask her what led up to her doing that,
12 but I'm not aware of any reason.

13 Q You referred earlier to, I believe this is
14 a quote, an informal agreement between your office
15 and the Senate Banking Committee?

16 A Between I believe it was Ed Knight and Bob
17 McNamara and the Senate Banking Committee. Ed, at
18 the time, was not in the general counsel's office.

19 Q Between the Treasury Department and the
20 Senate Banking Committee?

21 A Yes, right, uh-huh.

22 Q And I believe you characterized that

1 agreement as stating that the Treasury Department
2 would not give deposition transcripts to witnesses
3 prior to those witnesses testifying before the
4 committee or --

5 A No. My understanding of the agreement was
6 that Treasury would not give access to records from
7 other Treasury employees' offices. We collected
8 records from Jean Hanson's office, Roger Altman's
9 office, et cetera, that we would not give records
10 collected from those offices or other information or
11 allow witnesses essentially to talk to each other
12 about their testimony until the Senate Banking
13 Committee staff had completed their depositions. I
14 was subsequently told that they had completed their
15 depositions of everybody but Secretary Bentsen.
16 Secretary Bentsen, I think, was deposed around the
17 24th or 25th of July.

18 Q Do you recall when that arrangement might
19 have been entered into?

20 A I believe in June, maybe July, but probably
21 June.

22 Q You testified that it was Mr. Knight and

1 Mr. McNamara?

2 A To the best of my recollection, it would be
3 Mr. Knight and Mr. McNamara or possibly just
4 Mr. McNamara in consultation with us, with
5 Mr. Knight, but I believe Mr. McNamara actually
6 talked to the staff.

7 Q Were you consulted?

8 A As I said, Mr. Knight, Mr. McNamara,
9 Mr. Schmalzbach and I met frequently and we would
10 discuss all pending issues that were coming up in the
11 course of this preparation. So I would have
12 participated in some discussion of that, almost
13 certainly, assuming that I was not in Ireland at the
14 time, but I did not participate in the discussions
15 with the Senate staff.

16 Q To your knowledge, was there any agreement
17 limiting the use of either witness statements or
18 other materials to prepare other witnesses?

19 A Not specifically. We took this as an
20 extension, essentially that when the IG transcripts
21 came over, we took that as essentially -- the same
22 agreement would apply to it. That's why we put the

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1 condition in my letter to Ms. Sherburne. That's why
2 I put that condition in my letter to Ms. Sherburne.
3 The agreement was really that we would not show
4 information or allow witnesses to talk to each
5 other. It wasn't really that we couldn't sort of in
6 a more general way use our knowledge as part of the
7 preparation of witnesses.

8 Q Does your job generally entail the
9 preparation of departmental witnesses for
10 Congressional testimony?

11 A Yes.

12 Q How do you usually perform that duty?

13 A It very much depends on what is the subject
14 of the hearing, but I would characterize this
15 hearing, this kind of a hearing, as more of a
16 fact-based sort of hearing as opposed to a
17 legislative development kind of a hearing.

18 But what you do is it's very -- my
19 background is as a civil litigator. I prepare
20 witnesses for trial. I use those same skills in
21 preparing witnesses to testify before Congress, try
22 to find out the fact, talk to the witnesses, talk to

1 the potential witnesses, try to develop a full
2 picture of the facts, talk over with the witnesses
3 their recollection of the facts and try to come up
4 with anticipated questions and sort of do a moot
5 court or something with the witness, just the sort of
6 normal way you would prepare a witness for a civil
7 trial.

8 Q So you would try to anticipate questions
9 that might arise?

10 A Sure.

11 Q And would you try to direct a witness
12 towards sources of information where they have gaps
13 in their knowledge?

14 A Generally, yes. Often in Congressional
15 hearings, you have a limited number of witnesses and
16 you're trying to cover a fairly wide range of facts,
17 and where in a civil case you would have each witness
18 come on and testify about their specific knowledge of
19 the facts, in a Congressional investigation you might
20 well want a witness to testify beyond their immediate
21 knowledge.

22 Q If there were prior sworn testimony, would

1 you normally use that testimony to prepare a witness?

2 A Most definitely.

3 Q So there wouldn't be anything unusual in
4 your judgment about the use of prior sworn testimony
5 to prepare a witness for Congressional testimony?

6 A I think it would be malpractice not to do
7 that.

8 Q Did you view it as part of your obligation
9 in preparing Secretary Bentsen for his testimony to
10 make use of the transcripts of the Inspector
11 General's investigation?

12 A Yes.

13 Q And whatever other factual sources you
14 could get your hands on?

15 A Whatever else I could find out, right.

16 Q Would that have been your normal practice?

17 A Yes.

18 Q With the exception of the limitation on
19 personal factfinding, was there anything abnormal
20 about your preparation process in this instance?

21 A That made the process somewhat abnormal.
22 It's hard to describe the process as normal when we

1 weren't allowed to do our own sort of individual
2 factfinding and had to rely on others to do the
3 factfinding and development. Obviously, we always
4 rely on other sources of information, but generally
5 you like to be a little more hands-on with the
6 factual development than we were able to be in this
7 process.

8 Q Did you use the deposition transcripts for
9 any purpose other than to prepare Secretary Bentsen?

10 A Yes, as part of our preparation to advise
11 Secretary Bentsen on -- remember, we didn't know what
12 the OGE results were going to be. We had to be
13 prepared for all sorts of things that could
14 potentially have happened when the OGE issued its
15 report. So we had to have a very good grasp of the
16 facts before going into advise the Secretary on what
17 to do and whether he should in fact accept the OGE
18 findings, depending upon what they were.

19 Also we used it to prepare Dennis Foreman
20 and Ben Nye.

21 Q Other than preparing witnesses for their
22 hearings and preparing to advise the Secretary with

1 respect to personnel actions, did you use the
2 transcripts for any other purpose?

3 A I can't think of any other purpose at the
4 moment.

5 Q Did you use the draft report by the
6 Inspectors General to help prepare Secretary Bentsen
7 and the other witnesses?

8 A Only to a limited extent. We relied more
9 on the transcript summaries that my own team of
10 lawyers had done during the week of July 18 and the
11 transcripts themselves, but I mean the summary helped
12 us. It was a chronology, basically. It was somewhat
13 useful in pointing us to it, but because of the
14 transcript summaries that we had done, we were -- by
15 the date on which we got the draft report, we were
16 that much farther along in our knowledge. The draft
17 report just sort of helped to supplement that and
18 draw things together.

19 Q Did you also use the draft report to assist
20 in your preparation to advise the Secretary with
21 respect to personnel decisions?

22 A To the same extent, yes.

1 Q With the exception of the provision of the
2 deposition transcripts to Ms. Sherburne on the 23rd
3 of July, did you ever provide the transcripts or show
4 the transcripts to anyone outside the Treasury
5 Department, also with the exception of private
6 counsel for witnesses?

7 A On or after July 31 they were made public,
8 but before that, no.

9 Q Prior to their being made public?

10 A Prior to that, no, not that I recall.

11 Q Prior to the report being made public, did
12 you ever show the draft report to anyone outside the
13 Treasury Department, with the exception of -- well, I
14 don't believe you did show it to the White House.

15 A No, I don't believe so. I don't think we
16 did show it to anyone.

17 Q Did you ever actually show the deposition
18 transcripts to potential Congressional witnesses?

19 A No, the witnesses themselves, I don't think
20 so.

21 Q Did you ever show the draft report to
22 potential deposition witnesses?

1 A Sorry, potential deposition witnesses?

2 Q I'm sorry, potential Congressional
3 witnesses.

4 A I believe we gave a copy of the draft
5 report or the final report, and I'm not sure which,
6 to the Secretary at some point.

7 Q Other than the Secretary, did you show the
8 draft report to any potential witness?

9 A I don't believe so. After it was final,
10 Dennis Foreman may have been given a copy of it,
11 before his testimony.

12 Q I'm referring to the time period prior to
13 the public release of the report.

14 A Right. I don't believe so.

15 Q But you did use the knowledge that you
16 gained from the transcripts and the draft report in
17 preparing the witnesses?

18 A Primarily from the transcripts. The draft
19 reports are fairly cold, flat statement of facts. We
20 had already, to some extent, worked through that.

21 Q You took a vacation from the 1st of July to
22 the 16th, was it?

1 A 16th of July. A miracle. It was a family
2 reunion in Ireland which it was long planned and I
3 did not think I was going to be able to go, but I was
4 in the end.

5 Q Did you speak with anyone in the office
6 other than Mr. Schmalzbach during that period?

7 A I think I only talked to Mr. Schmalzbach.
8 My secretary, whoever answered the phone, but I think
9 I only talked to Mr. Schmalzbach. I may have talked
10 to my staff about ongoing issues when I called. I
11 have a vague recollection that I did, not related to
12 this, but other matters, but I think only
13 Mr. Schmalzbach.

14 Q With relation to the investigation of
15 Treasury White House contact, did you speak with
16 anyone other than Mr. Schmalzbach?

17 A I don't believe so. I don't recall doing
18 so.

19 Q After your return, not long after your
20 return, you received a first a copy of the draft
21 report?

22 A No. We received a copy of the draft report

1 on -- I returned on the 16th and received a copy of
2 the draft report on the 22nd.

3 Q And before that you received copies of some
4 of the deposition transcripts?

5 A Yes, beginning on about July 18.

6 Q And then on the 22nd you received a copy of
7 the draft report?

8 A Right.

9 Q And --

10 A The draft IG report.

11 Q Right. And you or your staff then began
12 comparing the two documents or the transcripts to the
13 draft report in some fashion?

14 A I think what we did was we had prepared
15 summaries of the transcripts, and I think we compared
16 the summaries to the report and then where there were
17 apparent discrepancies, went back and looked at the
18 transcripts.

19 Q And you suggested corrections to
20 Ms. Kerner?

21 A Yes.

22 Q What was the basis for your suggesting a

1 correction?

2 A We were relying on this report. We knew
3 the Office of Government Ethics would be relying on
4 this report, we knew the Secretary would be relying
5 on this report to decide what, if any, action to take
6 with respect to the continued tenure of the general
7 counsel and the Deputy Secretary. It was critically
8 important that that report be complete and accurate,
9 and we believed that we could -- having reviewed all
10 the transcripts in the preceding week and summarizing
11 them -- we believed that we could help in that
12 process.

13 Q And what were the criteria that you used
14 for identifying an area that might need correction?

15 A Well, actually, any error that sort of came
16 off the page at us, and there were a few where there
17 were just -- you've got the memo there, but there
18 were a few that appeared to be just flat errors of
19 reading of transcripts, et cetera, and things where
20 we felt they needed to be developed somewhat more. I
21 could probably be more specific if I had the
22 document.

1 Q Was there any effort to affect the tone of
2 the report?

3 A No, not really. Actually the only thing
4 that I recall doing in particular with regard to that
5 is Peter and David came back with a fairly long list
6 of typographical errors, et cetera, in the report,
7 many of which were fairly minor. And I think I took
8 some of them off the list, thinking that -- I mean,
9 the IG had been working hard on this report and we
10 didn't want to insult them too much in terms of you
11 got the punctuation marks wrong. So I guess in terms
12 of tone, we let some of those errors go through, but
13 no, we weren't trying to affect the tone.

14 Q I don't mean language choices.

15 A Right.

16 Q I mean to the extent that the report
17 suggested that anybody acted properly or improperly,
18 were your suggested changes in any way intended to
19 alter or affect that kind of tone?

20 A No, they really couldn't be. The report is
21 not that kind of report. It purports to be a factual
22 recitation, a fairly flat one without conclusions.

1 In fact, I think if I recall, it's been a while since
2 I read the report, but if I recall they report
3 inconsistencies of testimony without drawing
4 conclusions as to credibility. Basically, these are
5 the facts. Someone else is going to figure out what
6 these facts mean.

7 Q So there was no attempt to cast blame on
8 any particular individual?

9 A No.

10 Q And there was no attempt to protect any
11 particular individual?

12 A No.

13 Q You indicated that it was not unusual for
14 your office to review draft Inspector General
15 reports, or at least that you had done so in the
16 past?

17 A We had done so in the past, I believe,
18 yes. There's an investigation I recall which was
19 requested by one of the deputy assistant secretaries
20 in management where we reviewed a draft of a report.

21 Q Do you recall why you did so in the
22 previous instance?

1 A The allegations that were brought to the
2 Inspector General had to do with employee
3 misconduct. We had expressed concern about that
4 particular issue. It was a somewhat messy personnel
5 case involving a GS-13. And I don't remember whether
6 we asked to review the report or what, but I believe
7 we saw a draft of the report and commented on it.

8 Q Were your comments of the same nature as
9 your comments in this case?

10 A My recollection is that the comments there
11 were asking them to go back and pursue the
12 investigation in a couple of areas a bit more. To
13 the best of my recollection, they may have been like
14 this as well, but I believe there may have been some
15 questions not asked that we thought should be asked.

16 Q Would it be fair to describe your comments
17 in the prior case as more substantive than your
18 comments in this case?

19 A Yeah, I guess.

20 Q Can you recall any other draft IG reports?

21 A That's the one that comes to mine. I think
22 we have looked at others. I'm fairly certain we

1 have. That's the only specific example that I can
2 think of.

3 Q But it wasn't unique for your office to
4 look at the draft IG report with respect to the
5 Treasury White House contacts?

6 A No. We almost always looked at draft audit
7 reports that involve our clients or involve our
8 organizations. And in some ways, this kind of
9 investigation where there's no criminal aspect here,
10 because the criminal aspect is being handled
11 somewhere else. And this is being done for the
12 Secretary for a specific purpose, actually being done
13 for an outside organization, in some ways was almost
14 like an audit as much as it was an investigation. It
15 was kind of both.

16 Q Audit reports are also produced by the
17 Inspector General?

18 A Yes. They deal with management problems or
19 management issues.

20 Q And you commonly review those before they
21 are finalized?

22 A Yes, yes. There's actually a process by

1 which you review them and make -- well, they're
2 usually reviewed by the office that happens to be
3 responsible for the program is where they're
4 reviewed. That office often asks the general
5 counsel's office to look at it, too, and there is
6 generally a letter or comments back on the report
7 that is sent to the IG.

8 There's an attempt to resolve differences
9 with the IG's office, and then in the end there is a
10 formal letter that is attached by the office that
11 requested or that was being reviewed in responding to
12 the report, all of which becomes part of the IG's
13 report. It's a more formal process than really what
14 we're talking about here.

15 Q With respect to the investigation into
16 White House Treasury contacts, to your knowledge, did
17 anybody put any pressure on either Ms. Kerner or
18 anyone else in the Inspector General's office to
19 adopt your suggestions?

20 A No, they didn't. They didn't adopt many of
21 them and no pressure was put on them.

22 Q I believe you testified that, to your

1 knowledge, Mr. Schmalzbach did not have any
2 substantive discussions with Ms. Kerner about the
3 subject matter of the investigation prior to receipt
4 of the draft report?

5 A Not to my knowledge.

6 Q To your knowledge, did anybody in the
7 Office of General Counsel have any substantive
8 discussions with Ms. Kerner prior to receipt of the
9 draft report?

10 A I don't believe so.

11 Q To your knowledge, did anybody outside the
12 Inspector General's office but inside the Treasury
13 Department have any substantive discussions with
14 Ms. Kerner regarding the subject matter of the report
15 prior to its receipt?

16 A I'll modify my answer. Some of the
17 witnesses were, in fact, general counsel employees
18 like Ms. Hanson and Mr. Foreman. Obviously they
19 talked about substance, but aside from people who
20 were witnesses, not to my knowledge.

21 Q And that's true with respect to the entire
22 Treasury Department, to the best of your knowledge?

1 A Yeah.

2 Q You received a request from Ms. Sherburne
3 for access to the deposition transcripts on July 22
4 or 23?

5 A Yes.

6 Q Was that a telephone call?

7 A Yes.

8 Q And you conveyed that request to whom?

9 A Mr. Knight, Mr. Schmalzbach and
10 Mr. McNamara and then subsequently to Mr. Cesca and
11 Ms. Kerner.

12 Q Did either Mr. Schmalzbach, Mr. Knight or
13 Mr. McNamara express any objection to releasing the
14 transcripts to the White House?

15 A No, not that I recall. We had talked about
16 it earlier. We understood the IG's objections
17 earlier, but if you're asking me about the 22nd after
18 we had received the draft IG report and the draft --
19 the transcripts -- the draft IG report, the answer is
20 not that I recall any objection at that point.

21 Q You then tried to reach Mr. Cesca?

22 A Yes.

1 Q It may have been immediately, it may have
2 been --

3 A Next morning.

4 Q The next morning?

5 A Right. And I may have talked to Ms. Kerner
6 first, but I believe it was Mr. Cesca.

7 Q Did Mr. Cesca express any objection to
8 releasing the depositions?

9 A No, I don't believe so.

10 Q Did he express approval for the idea?

11 A He did in the end. In the first

12 conversation my recollection is he wanted to talk it
13 over with Francine. He didn't really express much in
14 the way of view, but I did not recall him expressing
15 an objection.

16 MR. O'CALLAGHAN: I think that was already
17 asked and answered, too, by the way.

18 MR. PORTNOY: Yes, I believe it was.

19 BY MR. PORTNOY:

20 Q You stated that you thought Ms. Sherburne's
21 request was reasonable or seemed reasonable?

22 A Uh-huh, yes.

1 Q Why did it seem reasonable to you?

2 A Because Mr. Cutler was going to be
3 testifying in slightly over two days, three days.
4 Ms. Sherburne was working on his testimony. That
5 testimony was going to be his report on what the
6 White House people did. And it seemed to me to be
7 reasonable that Mr. Cutler should have all of the
8 information available about what people did and some
9 of that very important information would be the sworn
10 transcripts taken by the Inspector General.

11 Q Did you have any concern that the Inspector
12 General's investigation might still be ongoing?

13 A No, Mr. Cesca told me that he had completed
14 all the interviews that he expected to take and that
15 the draft report, which was delivered to the
16 Secretary and OGE at the same time, the draft report
17 was his product that he was signing off on.

18 Q Did you consider whether, as a formal
19 matter, the investigation might still be open?

20 A I knew that OGE, sort of like we had done
21 in the earlier case that I had talked about, that OGE
22 might say we need to talk to somebody else or, you

1 know, can you ask this question or can you go back
2 and get some clarification. I mean, I knew that was
3 a possibility, but Mr. Cesca was telling me that they
4 had done all the interviews they had planned, that
5 they were satisfied that they had completely
6 investigated the matter.

7 Q So as far as you were concerned, as a
8 practical matter, the investigation was closed?

9 A Right.

10 Q So you considered whether providing the
11 depositions to witnesses might potentially taint
12 their testimony?

13 A Yeah, except that, of course, we had agreed
14 that that wasn't going to happen until we -- I mean,
15 that wasn't something I was particularly worried
16 about. In addition, I was considering the fact that
17 most of the witnesses had appeared before grand jury,
18 most of the witnesses had done sworn depositions with
19 the Senate, the witnesses obviously in this group had
20 all done sworn depositions with the IG. Many of them
21 had been interviewed by the House Banking Committee.

22 I wasn't really worried at this stage that

1 people were going to change their testimony or at
2 least that they could somehow change their
3 testimony. They were on the record.

4 Q So you didn't see much risk that testimony
5 would be tainted?

6 A No.

7 Q You said that you eventually ended up in a
8 three way telephone call with Ms. Kerner and
9 Mr. Cesca?

10 A That's what I recall, yes.

11 Q Was this a call in which Mr. Cesca conveyed
12 to you his decision that the transcripts could be
13 released?

14 A He certainly did it in a three-way
15 telephone call that day. What I'm not absolutely
16 certain about is whether there was more than one
17 call. I believe it's possible there was one call
18 with the three of us, then Mr. Cesca and Francine
19 decided they needed to talk and later on we had
20 another call. That actually is my best recollection
21 of this, but I'm not sure about whether there was one
22 conversation and I was just put on hold or whether

1 there were two conversations.

2 Q This was on Saturday, the 23rd of July?

3 A This was on Saturday, the 23rd of July.

4 Q You were a little uncertain as to the
5 time. You suggested that it might have been late
6 morning, it might have been early afternoon.

7 A Right.

8 Q Could it have been later?

9 A Could have been a bit later, yeah, because
10 I think the transcripts went over late afternoon,
11 maybe even early evening. And I wouldn't have --
12 once Mr. Cesca agreed, as I said, I had a
13 conversation with Ms. Sherburne, drafted the letter
14 and then they would have gone over. We would not
15 have delayed very long in getting that process done,
16 so it might have been a little bit later than that, a
17 little bit later than late morning or early
18 afternoon.

19 Q Could it have been 6:00?

20 A Might have been. My recollection is the
21 transcripts went over about 6:00, so it would have
22 been earlier than that, but it might have been as

1 late as 6:00.

2 MR. PORTNOY: Off the record.

3 (Discussion off the record.)

4 MR. PORTNOY: What was the last question
5 and answer?

6 (The reporter read the record as requested.)

7 BY MR. PORTNOY:

8 Q But you have a general memory rather than a
9 specific memory?

10 A Right. It's more of the order of events
11 rather than of the specific time.

12 Q When you spoke to Mr. Cesca and
13 Ms. Kerner -- one moment.

14 MR. O'CALLAGHAN: Off the record.

15 (Discussion off the record.)

16 BY MR. PORTNOY:

17 Q When you spoke with Mr. Cesca and
18 Ms. Kerner, was it a hostile conversation in any way?

19 A No, I try to avoid those if I can.

20 Q Was anybody angry?

21 A No.

22 Q Would you describe it as a relatively

1 cooperative discussion?

2 A It was a discussion among two lawyers and a
3 nonlawyer. The lawyers had different views, but it
4 was as cooperative as discussions are among lawyers,
5 yes.

6 Q Did you feel that you needed to convince
7 Mr. Cesca of your view?

8 A I wasn't actually sure what Mr. Cesca's
9 view was until fairly late in the conversation, which
10 was his decision to go ahead and send the
11 transcripts. I had to convince Ms. Kerner somewhat,
12 or at least Ms. Kerner had a position and I had a
13 position, which we both articulated. I guess in that
14 process, there was some convincing of Mr. Cesca, but
15 I'm not sure where he was at the beginning of the
16 conversation.

17 Q So he could have started the conversation
18 with the idea that he was going to release the
19 transcripts?

20 A That's possible. I don't know where he was
21 in that, in his decisionmaking. He clearly wanted to
22 talk to Ms. Kerner.

1 Q And you said that Ms. Kerner was opposed to
2 the release of the transcripts at this point?

3 A Yeah, her objection was that the
4 transcripts were going to be made public anyway
5 within a matter of days. And essentially she felt
6 that the IG's office might be criticized from giving
7 the transcripts to the White House counsel prior to
8 them being made public and why -- her view was, at
9 least from the IG's perspective, there was nothing to
10 be gained by giving it to the White House counsel
11 early from her client's perspective.

12 Q So Ms. Kerner's approach to the problem was
13 to protect the Inspector General and Inspector
14 General's office?

15 A Very much.

16 MR. O'CALLAGHAN: Off the record.
17 (Discussion off the record.)

18 MR. PORTNOY: Last question?
19 (The reporter read the record as requested.)

20 BY MR. PORTNOY:

21 Q Aside from her concern that the Inspector
22 General's office might be subject to criticism for

1 releasing the transcripts, did Ms. Kerner express any
2 objection to the release of the depositions?

3 A None other that I recall. I think that's
4 it, that's the nub of it.

5 Q So nobody expressed any concern, for
6 example, that the investigation might still be
7 ongoing?

8 A The IG's investigation, no. No, I mean we
9 knew that the draft had gone over to OGE and OGE
10 potentially would have some questions.

11 Q After your conversation with Ms. Kerner and
12 Mr. Cesca, you drafted the letter to Ms. Sherburne?

13 A Yes.

14 Q And you showed it to Mr. Schmalzbach?

15 A Yes.

16 Q Did Mr. Schmalzbach raise any objections to
17 either the release of the depositions or the terms of
18 the letter?

19 A Not that I recall. I'm fairly certain he
20 did not.

21 Q Just to be clear, did anybody at any time
22 suggest to you the conditions under which the

1 deposition transcripts should be released or was that
2 entirely your own product?

3 A I believed that those conditions -- I
4 formulated those conditions for that letter. I
5 believed that those conditions were necessary to
6 implement an agreement that I had not reached, but
7 that I understood to have been reached between the
8 Department of the Treasury and the Senate Banking
9 Committee staff, so the terms were suggested by the
10 agreement as I understood it.

11 Q But you didn't actually discuss them with
12 anyone before drafting the letter?

13 A Oh, I believe I related to Ms. Kerner and
14 Mr. Cesca that those terms would be in the letter.

15 MR. O'CALLAGHAN: You've already testified
16 to that earlier; right?

17 THE WITNESS: Yes, I have. And I believe I
18 discussed it with Ms. Sherburne, and I may have
19 discussed it with Mr. Knight, Mr. McNamara and
20 Mr. Schmalzbach. Certainly Mr. Schmalzbach saw the
21 letter so he was aware of the conditions.

22 BY MR. PORTNOY:

1 Q Was Mr. Schmalzbach involved in negotiating
2 the agreement with the Senate Banking Committee?

3 A I think it was Mr. McNamara and
4 Mr. Knight. He could have been. He did go to some
5 meetings at the Senate Banking Committee staff.

6 Q You don't recall that Mr. Schmalzbach made
7 any changes in your letter?

8 A No. He might have, but I don't recall any
9 specific changes.

10 Q Show you a copy of your letter, which is,
11 for the record, Bates stamped 10954. It's not a
12 signed copy, but as far as I can tell, it is
13 identical to the signed copy, and ask you to look
14 again at the second paragraph, which outlines the
15 conditions under which the depositions are conveyed
16 to the White House counsel's office and ask you to
17 explain what you meant by the phrase "not to disclose
18 the depositions to counsel."

19 A I'm sorry, the phrase "not to disclose the
20 depositions to counsel" would be not to show the
21 depositions or to give them copies.

22 Q It would not necessarily mean that the

1 content of the depositions couldn't be discussed,
2 would it?

3 A I think it would depend somewhat on
4 specifics. I would think that if they read the
5 deposition transcript to the counsel and the counsel
6 took down notes, that would be disclosure of the
7 deposition. If they had said we have heard testimony
8 that X, Y and Z occurred, I would not regard that as
9 disclosure of the deposition. I'm sorry that answer
10 was a little longer, but --

11 Q That's fine.

12 A And in fact, in looking at this document,
13 if I can correct an answer I gave earlier to
14 Mr. O'Callaghan, it's quite apparent that I did print
15 a draft of this document off. I would expect that I
16 probably showed it in this form to Mr. Schmalzbach
17 and after he reviewed it, I printed it off on
18 letterhead.

19 Q I believe you also, in the second paragraph
20 of the letter, placed conditions on to whom the
21 transcripts may be shown?

22 MS. STERGIS: Could we have a copy of the

1 signed one as well? What we're testifying to is the
2 ultimate --

3 MR. O'CALLAGHAN: Majority is providing a
4 copy with 6877 is my Bates stamp.

5 MR. PORTNOY: Thanks.

6 MR. O'CALLAGHAN: You're welcome.

7 BY MR. PORTNOY:

8 Q "We've agreed that the transcripts we are
9 providing to you with this letter will not be
10 disclosed publicly or shown to individuals"?

11 A Right.

12 Q Would either the phrase "disclosed
13 publicly" or "shown" preclude discussions of the
14 contents of the depositions?

15 A My earlier answer, I think, stands for that
16 one, too. It depends on how it was done.

17 Q Just want to be clear.

18 A Right.

19 Q So in your view, would it have violated the
20 terms of this letter to use the information in the
21 depositions to prepare Mr. Cutler for his testimony?

22 A No.

1 Q Would it have violated the terms of this
2 agreement to use information contained in the
3 depositions to prepare other witnesses?

4 A Yes. The letter says "to be used solely to
5 assist you in the preparation of Mr. Cutler's
6 testimony, at least until such time as this agreement
7 is no longer in place."

8 Q But it would not violate the agreement, I
9 believe you testified, to discuss the contents of the
10 depositions in order to clarify any discrepancies so
11 that Mr. Cutler would testify accurately and
12 completely?

13 A Right.

14 Q You testified that you called Ms. Sherburne
15 after Mr. Cesca approved the transfer of the
16 depositions.

17 A Yes.

18 Q And you also testified that Ms. Sherburne
19 did not object to the conditions in your letter, but
20 that she asked you to make a clarification?

21 A Looking at the letter, that's my
22 recollection is that there was sort of a

1 clarification in that parenthetical. Somehow I think
2 that was suggested by Ms. Sherburne, just looking at
3 the letter, that has refreshed my recollection to
4 that extent.

5 Q And the clarification was that Mr. Cutler
6 could be shown the depositions?

7 A Yes, yes.

8 Q Does that indicate to you that
9 Ms. Sherburne drew a distinction between showing
10 depositions to a potential witness and using the
11 information in the depositions in conversation with
12 the witness?

13 A I think you'd have to ask Ms. Sherburne
14 that, I'm sorry.

15 Q Would you draw that distinction?

16 A I expected that the transcripts would be
17 used in the preparation of Mr. Cutler's testimony,
18 and I knew Mr. Cutler's testimony was the report of
19 his review. It would not surprise me, it would not
20 have surprised me and does not surprise me if they
21 did it that they would try to clarify points where
22 there appeared to be discrepancies or areas that they

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1 had not really fleshed out.

2 Q And those clarifications might entail
3 conversations with other potential witnesses?

4 A Yes.

5 Q Do you have any evidence that the White
6 House violated the terms of the agreement in this
7 letter?

8 A No. I saw a letter from Mr. Cutler
9 sometime in August saying that he had, in fact,
10 complied with these terms.

11 Q Do you have any reason to believe that
12 Mr. Cutler's assurance that he had complied with the
13 terms of this agreement was untruthful?

14 A No, I have no reason to believe that.

15 Q So, to the best of your knowledge, has the
16 White House complied with the agreement?

17 A To the best of my knowledge.

18 Q To the best of your knowledge, has any use
19 that you would characterize as improper been made of
20 the deposition transcripts?

21 A Not to the best of my knowledge.

22 MR. PORTNOY: That's all I have. Thank

1 you.

2 EXAMINATION

3 BY MR. O'CALLAGHAN:

4 Q I just have a couple quick follow-ups and
5 then we'll be on our way here.

6 Did Mr. Schmalzbach, at any time, express
7 any concerns about handing over transcripts to the
8 White House unredacted transcripts?

9 A Someone in our group had concerns about
10 turning the transcripts over early in the week of
11 July when we were getting them. We knew that White
12 House wanted it then and there was some discussion
13 about when we would do that or when we could do that,
14 when we could make them available to the White House,
15 when we could make them available to witnesses. It
16 was clearly the consensus that we shouldn't do that
17 before we got the draft report, but once we had the
18 draft report, I don't believe Mr. Schmalzbach had any
19 further objections or anybody had any further
20 objections. Early in the week of July 18.

21 Q July 18th when you first got the
22 transcripts?

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1 A Right.

2 Q But after you received the draft report,
3 there weren't concerns expressed about it?

4 A Not that I recall, except by Ms. Kerner.

5 Q And the draft report you received on the
6 22nd, was the information contained in the draft
7 report information drawn from the transcripts?

8 A To the best of my knowledge.

9 Q Were any of the --

10 A Note that we made some corrections that we
11 felt there was information in the draft report that
12 was not supported by the transcripts or that was
13 somewhat contrary, but aside from that, not to the
14 best of my knowledge.

15 Q Were any of the Treasury witnesses briefed
16 before they were interviewed by the IG's offices?

17 A I would expect that Ms. Hanson and
18 Mr. Altman and Mr. Steiner and Mr. DeVore were
19 prepared by their lawyers. There was some
20 preparation of Secretary Bentsen. I don't recall
21 whether there was any preparation of Mr. Foreman.

22 Q The people you just mentioned who were

1 briefed, did the department provide their attorneys
2 with any materials to help brief them with?

3 A All of the witnesses were provided with
4 copies of the records from their office that had been
5 collected from their offices. I believe that's all
6 the material they were given prior to their
7 depositions by the IG.

8 Q Were they given information collected from
9 other people's offices or just their own?

10 A I think it was just their own offices.

11 Q Do you know for certain?

12 A I am fairly certain. I did not give all
13 the information. That was certainly our plan to do
14 that, and I have no reason to believe that we
15 deviated from that plan.

16 Q Who else was involved in providing the
17 information?

18 A Depends on exactly when and how it was
19 done. Mr. McNamara did some of it, I did some of it
20 primarily, and I may well have been assisted by some
21 of my staff members.

22 Q Anyone else?

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1 A I don't believe so. It's possible that
2 Mr. Schmalzbach was involved.

3 Q Do you have knowledge whether any of the
4 private counsel that were provided copies of the
5 transcripts, whether any of them shared them with
6 anyone other than their clients?

7 A No, I don't have any knowledge.

8 Q Did you hear reports that that happened?

9 A Yes.

10 Q What did you hear?

11 A I don't recall. I recall there was some
12 discussion during the hearings, I believe it was the
13 Senate hearings, something to do with -- you'd have
14 to check the record. I think Mr. Altman may have
15 testified that he saw somebody's transcript or
16 something like that. You'd have to check. My vague
17 recollection is something came up about that at the
18 Senate hearings on the record.

19 Q Other than what you heard during the
20 hearings, had you ever heard anything to that effect?

21 A No.

22 Q Had you ever read anything to that effect?

1 A In newspaper articles reporting the
2 hearings, I believe. I think Senator Bond issued
3 some press releases saying that. Oh, and I read a
4 letter from Senator Bond to Senator Riegel in which
5 that was raised as an issue, I believe.

6 Q Are you aware of any investigation that's
7 been previously conducted by the Inspector General's
8 office that involved possible misconduct by the
9 general counsel or the deputy general counsel?

10 MS. STERGIS: What's the relevance?

11 MR. O'CALLAGHAN: Excuse me?

12 MS. STERGIS: Objection to relevance.

13 MR. O'CALLAGHAN: He was asked earlier.

14 MS. STERGIS: Okay. Go ahead and answer.

15 THE WITNESS: No.

16 MR. O'CALLAGHAN: No further questions.

17 MR. PORTNOY: Thank you.

18 (Whereupon, at 5:56 p.m., the deposition
19 was concluded.)

20

21

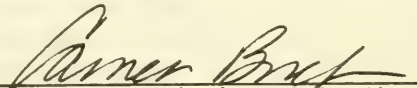
22

STEPHEN J. MC HALE

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

DEPONENT McHale

ERRATA

<u>PAGE</u>	<u>LINE</u>	<u>CHANGE FROM</u>	<u>CHANGE TO</u>	<u>REASON</u>
17	15	"Ann Marie McGuire"	"Annemarie MAGUIRE"	
24	4	STRIKE "	he was"	
30	3-4	STRIKE "Each of these general counsels	have staffs."	
31	3	"who"	"what"	
32	4	"Ann Marie McGuire"	"Annemarie MAGUIRE"	
33	1-2	Strike "for general"		
33	2	"Treasury"	"Treasurer"	
38	22	Strike "the"		
39	18	"memorandum of legal"	"memorandum or legal"	
43	16 & 20	"Neil"	"Neal"	
44	4 & 5	"Secretariat"	"Secretary"	
52		MISSING FROM TRANSCRIPT		
71	9	"RTC Treasury"	"RTC-Treasury"	
78	15	to "prepared"	"involved"	
98	17	"Yours"	"the"	
111	7	INSERT AFTER "Basically"	"dealing with"	
126	19	"Want"	"Wanted"	

DEPONENT Stephen J. McHale

ERRATA

<u>PAGE</u>	<u>LINE</u>	<u>CHANGE FROM</u>	<u>CHANGE TO</u>	<u>REASON</u>
<u>12</u>	<u>16</u>	<u>but</u>	<u>and</u>	<u>misquoted</u>
<u>17</u>	<u>15</u>	<u>Ann Marie</u>	<u>Annemarie</u>	<u>misspelled</u>
<u>25</u>	<u>5</u>	<u>nexus</u>	<u>NEXIS</u>	<u>misspelled</u>
<u>26</u>	<u>6</u>	<u>potential</u>	<u>the potential</u>	<u>misquoted</u>
<u>30</u>	<u>3</u>	<u>general counsels</u>	<u>Assistant General Counsels</u>	<u>misquoted</u>
<u>30</u>	<u>22</u>	<u>administrative</u>	<u>administrative and</u>	<u>misquoted</u>
<u>32</u>	<u>4</u>	<u>Ann Marie</u>	<u>Annemarie</u>	<u>misspelled</u>
<u>32</u>	<u>9</u>	<u>Lizael</u>	<u>Leizel</u>	<u>misspelled</u>
<u>33</u>	<u>2</u>	<u>Treasury</u>	<u>Treasurer</u>	<u>misquoted</u>
<u>39</u>	<u>6</u>	<u>me</u>	<u>my</u>	<u>misquoted</u>
<u>43</u>	<u>16</u>	<u>Neil</u>	<u>Neal</u>	<u>misspelled</u>
<u>43</u>	<u>20</u>	<u>Neil</u>	<u>Neal</u>	<u>misspelled</u>
<u>44</u>	<u>11</u>	<u>issued</u>	<u>issue</u>	<u>misquoted</u>
<u>73</u>	<u>1</u>	<u>secretary</u>	<u>Secretary</u>	<u>case</u>
<u>78</u>	<u>15</u>	<u>prepared</u>	<u>involved</u>	<u>misquoted</u>
<u>91</u>	<u>4</u>	<u>but</u>	<u>delete "but"</u>	<u>misquoted</u>
<u>126</u>	<u>19</u>	<u>want</u>	<u>wanted</u>	<u>misquoted</u>
<u>152</u>	<u>8</u>	<u>asked</u>	<u>ask</u>	<u>misquoted</u>
<u>165</u>	<u>17</u>	<u>before</u>	<u>for</u>	<u>misquoted</u>
<u>168</u>	<u>13</u>	<u>of</u>	<u>on</u>	<u>misquoted</u>

DEPONENT Stephen J. McHale

ERRATA

[illegible]

**DEPOSITION OF CLAYLAND BOYDEN GRAY
IN RE: S. RES. 120**

FRIDAY, OCTOBER 20, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of CLAYLAND BOYDEN GRAY, called for examination pursuant to notice of deposition, at 2:45 p.m. in Room 534 of the Dirksen Senate Office Building, before JANE W. BEACH, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.

Majority Chief Counsel

LANCE COLE, Esq.

Minority Deputy Special Counsel

U.S. Senate

Committee on Banking, Housing, and Urban Affairs

534 Dirksen Building

Washington, DC 20510

On behalf of the Committee.

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1 PROCEEDINGS
2 COMMITTEE CONFIDENTIAL

3 (2:45 p.m.)

4 MR. GIUFFRA: Good afternoon, Mr. Gray.
5 My name is Robert Giuffra. I am the Chief Counsel of
6 the Senate Banking Committee. To my left is Lance
7 Cole, who is Deputy Special Counsel for the Special
8 Committee to Investigate Whitewater Development
9 Corporation and Related Matters.

10 This is a deposition that is being
11 conducted pursuant to Senate Resolution 120. This
12 Resolution establishes a Special Committee
13 administered by the Banking Committee to conduct an
14 investigation into Whitewater Development
15 Corporation, Madison Guaranty Savings & Loan
16 Association, Capital Management Services, the
17 Arkansas Development Finance Authority, and other
18 related matters.

19 We will be asking you questions today
20 bearing on those subject matters.

21 This is a deposition that is being
22 conducted in advance of public hearings that the

4

1 Committee is going to start again in November, and
2 there is some possibility you might be asked to
3 testify. No judgment has been made, obviously, until
4 you testify and we find out what your knowledge with
5 regard to these matters is.

6 The stenographer will prepare a record of
7 the questions and answers. The deposition will be
8 treated as something called "Committee Confidential"
9 until the commencement of hearings. It may be made
10 public at that time.

11 Prior to the start of hearings, you will
12 receive a letter from the Chairman giving you an
13 opportunity to review the transcript of the
14 deposition and to correct whatever typographical
15 errors might be contained in the transcript.

16 You have a right to be represented by
17 counsel. I see you have chosen not to be represented
18 by counsel.

19 Is that correct, sir?

20 MR. GRAY: I didn't know that I had the
21 right, but I assumed -- I mean, I wasn't told, but I
22 would have assumed that I could have brought one if I

1 wanted to. I don't want to -- at least not yet.

2 (Laughter.)

3 MR. GIUFFRA: The Resolution specifies
4 various procedures for conduct of deposition that we
5 will adhere to today.

6 I will ask questions first for the
7 Majority, and then Mr. Cole will ask questions.

8 I may have follow up questions, and he may
9 have questions. Hopefully we can end this deposition
10 relatively promptly.

11 Objections can be made to the form of
12 questions, and also on grounds of relevance or
13 privilege.

14 If you have any questions with regard to
15 procedure at any time, let us know.

16 If at any time you want a break, or you do
17 not understand a question, again just let us know.

18 Do you have any questions before we begin,
19 sir?

20 (No response.)

21 MR. GIUFFRA: Would you swear in the
22 witness.

1 Whereupon,

2 CLAYLAND BOYDEN GRAY
3 was called for deposition in the above-entitled
4 matter and, having been first duly sworn by the
5 Notary Public, was examined and testified as
6 follows:

7 EXAMINATION

8 BY MR. GIUFFRA:

9 Q Mr. Gray, would you please state your full
10 name for the record?

11 A Clayland Boyden Gray.

12 Q Would you spell your last name?

13 A G-R-A-Y.

14

15

16 Q And your present business position?

17 A I am a partner in a law firm.

18 And I have other part-time obligations.

19 Q What law firm is that?

20 A Wilmer, Cutler & Pickering.

21 Q And your present business address?

22 A 2445 M Street, Northwest.

1 Q Could you please state very quickly in
2 chronological order the positions that you have held
3 since law school and the dates?

4 A I clerked for Chief Justice Earl Warren in
5 the 1968 Supreme Court Term.

6 Then I went to work as an associate at
7 Wilmer, Cutler in November of 1969.

8 I became a partner in 1976 and left the
9 firm in January of 1981 when I became Counsel to
10 then-Vice President Bush. I remained his counsel
11 until he became President when I became his counsel
12 as President for the full term.

13 Then I went back to my law firm.

14 Q I will try to be brief.

15 If at any time with regard to these
16 questions they raise any concerns with regard to
17 privilege or any Executive Privilege concerns that
18 may be continuing, please let us know.

19 During the time you served as White House
20 counsel to President Bush, did President Bush also
21 have private legal counsel that he had retained to
22 handle his personal legal matters?

1 A Yes.

2 Q How did you delineate between the type of
3 legal matters that President Bush's personal lawyer
4 would handle and those that would be handled by the
5 counsel's office?

6 A Personal, what I would call personal work,
7 taxes, blind trusts, problems involving his
8 residence, his personal residence, his house in
9 Maine, for example, those matters would be handled by
10 his private counsel. How to deal with the book
11 royalties from Mrs. Bush's book, for example; they
12 would be handled by his personal lawyer.

13 Matters arising out of his professional
14 White House obligations would be handled by the
15 counsel's office.

16 MR. BEN VENISTE: Off the record.

17 (Discussion off the record.)

18 BY MR. GIUFFRA: (Resuming)

19 Q With regard to President Bush's taxes, did
20 the White House Counsel's office play any role?

21 A We were consulted from time to time and
22 asked questions that might be relevant to their

1 preparation, but otherwise, no. We were not involved
2 in their preparation.

3 We would get briefed when they were about
4 to be made public so we could help the press office
5 explain them, but that was all.

6 Q Would the taxes be made public from the
7 White House? Or would they be made public by --

8 A My recollection is from the White House,
9 the press office.

10 Q Issues involving the tax treatment of
11 particular items, would those be decided with any
12 input from White House counsel's office?

13 A I think we were asked -- as I said, I think
14 we were consulted or asked once or twice about some
15 factual matters, but I certainly had no decisional
16 input into it.

17 Q With regard to President Bush's blind
18 trust, what role would the White House counsel's
19 office, if any, have played?

20 A It didn't play any -- oh, except to advise
21 that he should have one. I mean that, although it
22 was not technically, as I understand it then and

10

1 probably still now, it was not technically required,
2 I advised that he should have one. But I did not
3 involve myself in its preparation.

4 Q Did anyone from your office play any role
5 in setting up one?

6 A I don't believe so.

7 I don't recall. No -- I mean, I don't think
8 so.

9 Q And why was it that you attempted to
10 delineate the personal matters that would be
11 handled by personal counsel, and the matters that
12 would be related to the President's role as
13 President?

14 A Well I don't think the Taxpayers should
15 pay for personal matters, I suppose, is the short way
16 to answer it.

17 Q Let me direct your attention to the
18 Resolution Trust Corporation and criminal referrals
19 involving Madison Guaranty Savings & Loan.

20 During the time when you were White House
21 counsel, and particularly directing your attention to
22 1992, did anyone advise you of a criminal referral

1 involving Madison Guaranty Savings & Loan Association
2 that you can recall?

3 A I have a vague recollection that I was
4 informed of a banking matter, an S&L matter, by a
5 reporter named Bernstein, I think his name is. He is
6 successor to the Jack Anderson-Drew Pearson column,
7 "Washington Merry-Go-Round," whatever, who had been a
8 financial institutions' reporter and so might have
9 had an inside scoop.

10 I think he mentioned it to me in a lunch
11 one day. I believe that was the only time I ever
12 heard of it.

13 I have been questioned about this of
14 course in connection with a statement made -- and I am
15 kind of fuzzy on the details -- at your first round of
16 hearings two years ago as to whether I was informed
17 officially, and I don't recall being informed
18 officially.

19 Q By anyone at the Resolution Trust
20 Corporation?

21 A Right. Right.

22 MR. GIUFFRA: I have no further questions.

1 EXAMINATION

2 BY MR. COLE:

3 Q Mr. Gray, if I could just proceed with the
4 line of questions that Mr. Giuffra had just
5 developed, do you have any recollection of speaking
6 with Mr. Albert Casey, who at that time I believe was
7 the Chief Executive Officer of the Resolution Trust
8 Corporation regarding an RTC criminal referral?

9 A I do not recall discussing that matter
10 with him. It is possible he discussed it with me,
11 but I just don't recall. It's possible I'm confusing
12 what I now recollect hearing from the reporter that I
13 heard from him. That's possible, too, but that's not
14 my current recollection.

15 Q And when you testified a few moments ago
16 that you have a vague recollection of being informed
17 of an S&L matter by a reporter, was that an S&L
18 matter involving Madison Guaranty Savings & Loan?

19 A In retrospect, yes, that's what I think he
20 was referring to. Do I remember him saying Madison?
21 No. I just remember him saying "Arkansas" and "an
22 Arkansas S&L" is all I remember now being told.

1 Q Do you recall whether he mentioned then-
2 Governor Clinton when he told you about that matter?

3 A I think he did, yes.

4 That's why he would have raised it, that
5 this was an Arkansas S&L matter that didn't name --
6 wouldn't have charged them, but they were involved as
7 potential witnesses -- might be involved as potential
8 witnesses.

9 Q And it's your best recollection then today
10 that you did not contact the RTC to follow up on
11 that --

12 A That's my best recollection

13 Q -- information.

14 Do you have any knowledge as to whether
15 anyone else in the Bush White House followed up on
16 that information?

17 A Well I don't know who else would have had
18 it, and therefore I also don't know who might have
19 done anything with any information they might have
20 gotten.

21 Q Do you recall discussing what the reporter
22 told you with anyone else in the White House?

1 A No, I don't recall discussing it with
2 anybody.

3 Q With anyone, period, inside or outside the
4 White House?

5 A No.

6 Q Are you familiar with an entity called the
7 Thrift Depositor Protection Oversight Board that
8 existed at that time?

9 A (Nods in the negative.)

10 MR. GIUFFRA: You need to state it for the
11 record, 'yes' or 'no.'

12 THE WITNESS: No. I think the reporter
13 would like -- I am sort of curious, too. Would you go
14 over that again?

15 BY MR. COLE: (Resuming)

16 Q Sure. My understanding from the record
17 that has been developed in prior hearings and what is
18 in the public record is that an institution called
19 the Thrift Depositor Protection Oversight Board,
20 which was comprised of -- chaired by the Secretary of
21 the Treasury, which at that time I believe would have
22 been Mr. Brady. Also on the Board were Federal

1 Reserve Chairman Greenspan; OTS Director Ryan; FDIC
2 Chairman Taylor; and two outside Board members which
3 for the record I will state, perhaps to refresh your
4 recollection, were Robert Larson and Philip Jackson.

5 There has been previous testimony, which
6 you alluded to earlier, that Mr. Casey may have
7 informed members of that Board of the Madison
8 Guaranty criminal referral.

9 My purpose in raising the question was to
10 ask if you had any recollection of any discussions
11 with any of the members of that Board.

12 A I have no recollection, no.

13 Q In the summer and fall of 1992, did you
14 have any position or responsibilities in President
15 Bush's Re-Election Campaign?

16 A No.

17 Q Notwithstanding the fact that you didn't
18 have a formal position or responsibilities, did you
19 sit in on meetings with campaign officials or
20 campaign strategy meetings?

21 A Very rarely. As a general matter, no.

22 Q Do you have --

1 A There would be exceptions when, for some
2 particular reason, I might be called in for a portion
3 of a meeting, but by and large the answer is, no.

4 Q I would just ask the follow-up question.

5 Are you aware of whether a criminal
6 referral involving then-Governor Clinton and Madison
7 Guaranty Savings & Loan was ever discussed by any
8 campaign officials for the Bush Re-Election Campaign?

9 A I am not aware of any such discussions.

10 Q Then finally, and perhaps we can conclude
11 shortly, are you aware -- again focusing your attention
12 on the time period prior to the 1992 Presidential
13 election -- are you aware of any investigation
14 conducted by the Department of Justice relating to
15 Madison Guaranty Savings & Loan?

16 A (Nods in the negative.)

17 THE REPORTER: I'm sorry?

18 THE WITNESS: No. The answer is 'no.'

19 BY MR. COLE: (Resuming)

20 Q Did you receive any reports from then-
21 Attorney General William Barr or anyone else at the
22 Department of Justice concerning a criminal referral

1 involving Madison Guaranty Savings & Loan?

2 A Not to my recollection.

3 Q And I would ask the same question, sir,
4 with regard to then-FBI Director William Sessions or
5 anyone else at the FBI.

6 A Not to my recollection.

7 Q So your best recollection today is that,
8 with the possible exception of this one inquiry from
9 a reporter, you have had no knowledge of a criminal
10 referral?

11 A That's correct.

12 Q Do you recall, sir, what did the reporter
13 ask you, or what did he tell you about the criminal
14 referral?

15 A It was a fleeting reference; something to
16 the effect, you know, there's this trouble with an
17 Arkansas S&L that may involve, as witnesses may
18 involve the President -- now President -- may involve
19 Governor Clinton.

20 I don't know why he mentioned it. I
21 suspect he did because he thought that maybe if he
22 traded information with me that I would trade

1 information with him. But I wasn't interested in
2 trading information with him, so it didn't matter
3 what information he might have had to trade with me.

4 Q Was this a reporter that you spoke or met
5 with on a regular basis?

6 A No.

7 Q So was it unusual for him to contact you?

8 A No, it wasn't unusual. I think he would
9 have liked to have had many more meetings where I
10 would divulge all sorts of secrets, but I wasn't
11 interested in doing that. So -- I think that was
12 probably the only time we ever met -- maybe we met
13 twice, I don't know. Anyway, that's --

14 Q This was a face-to-face meeting?

15 A It was a lunch.

16 Q Was the purpose of the lunch to discuss
17 this matter?

18 A No.

19 (Pause.)

20 I don't think it was. I mean, it may have
21 been his purpose, but it wasn't my purpose. You'd
22 have to ask him if that was the purpose. Certainly

1 when the lunch was set up, this was not mentioned.

2 Q Did you discuss other matters?

3 A Oh, yes. I mean, that was, just as I

4 said, it was like two sentences in an hour-and-a-half
5 lunch.

6 Q Did he ever follow up with you or --

7 A I don't recall that he did, no.

8 Q Shifting to a different area of inquiry,

9 during the Bush Administration when you served as

10 counsel to the President, did you have occasion to

11 consult with the Office of Government Ethics on any
12 matters?

13 A Yes.

14 Q Briefly if you could, could you tell us

15 what matters that you did consult the Office of

16 Government Ethics on?

17 A Well, of course as between me and my

18 assistants, it is hard to separate out, but certainly

19 on the Sununu air travel matter we were deeply in

20 consultations with them.

21 We consulted with them on a variety of

22 matters, asking their advice about various questions

20

1 of, you know, ethical import that arise from time to
2 time.

3 There was a lot of traffic back and forth.

4 Q Either on the Sununu travel matter or on

5 any other matter while you served as counsel to the

6 President, did you ask the Government -- or did your

7 office request that the Office of Government Ethics

8 review or investigate a matter involving conduct of

9 White House officials?

10 A I think we did of Sununu. I think that is

11 what we did. Anybody else I don't remember, but I

12 think we did -- I think we did in connection with

13 Sununu.

14 Q To the best of your recollection, can you

15 describe the role the Office of Government Ethics

16 played in reviewing the Sununu matter?

17 In other words, what function did they

18 perform?

19 A They reviewed our report. I don't know

20 how much independent work they did, and factual work

21 they did, but they reviewed our report.

22 I think they accepted most of the facts,

1 and the question was: Was there -- what problems were
2 presented by the facts as we had developed them?

3 Q Did they conduct any interviews of White
4 House officials?

5 A They may have. They may have. I don't
6 think so, but I'm not at this stage positive.

7 Q Do you recall whether they prepared any
8 report or other work product?

9 A I believe they did prepare a report.

10 Q And was that report provided to either
11 your office or another office in the White House?

12 A I believe it was.

13 Q And do you recall whether the Office of
14 Government Ethics provided any background materials
15 such as interview transcripts or deposition
16 transcripts?

17 A I don't. Gosh, I don't. I just don't
18 remember. I don't think so; I just don't remember.
19 I don't think so, but I don't remember.

20 Q Do you recall whether at the time the
21 Office of Government Ethics was conducting the review
22 it conducted of the Sununu travel matter, did your

1 office consult with them while they were doing their
2 work?

3 A Possibly. Possibly, I just don't
4 remember.

5 Q Do you have a recollection as to whether
6 they shared information with you at the time, as they
7 were gathering and assembling information --

8 A What do you mean? What kind of
9 information?

10 Q The information that they were collecting
11 in the course of their review of the Sununu travel
12 matter.

13 A I just -- my memory about that is not finite
14 enough to help you out. I just don't remember.

15 Q I think we have covered it thoroughly, but
16 I did -- as you undoubtedly understand, we wanted to
17 follow up on the testimony that you made reference to
18 that had been given by Mr. Roullet, Vice President of
19 the Resolution Trust Corporation, in prior hearings
20 before the Senate Banking Committee in the summer of
21 1994 in which Mr. Roullet testified that he was told
22 by Mr. Casey that on two occasions Mr. Casey had

1 spoken with you about the Madison Guaranty criminal
2 referral by the RTC, and you have no recollection of
3 any such telephone discussions with Mr. Casey.

4 Is that correct?

5 A That's correct.

6 I had at least two discussions, maybe
7 more, with him about RTC funding. He had a problem.
8 Darman was not releasing some budget funds that he
9 needed to close down some S&Ls, and we did talk about
10 that, but I don't remember anything about Madison.

11 Q And you have no knowledge of anyone at the
12 Resolution Trust Corporation, the Federal Bureau of
13 Investigation, or the Department of Justice
14 contacting anyone at the White House about that
15 criminal referral in the time period prior to the
16 1992 Presidential election?

17 Is that correct?

18 A I have no knowledge of that -- no
19 recollection.

20 Q And you have no knowledge of anyone at the
21 White House or the Bush Campaign contacting any
22 government agencies about the referral, to ask the

24

1 question the other way?

2 A No.

3 Q My final question, then: Do you have any
4 knowledge of any improper communication of
5 confidential RTC information relating to Madison
6 Guaranty Savings & Loan or the Clintons prior to the
7 1992 Presidential Election?

8 A Can you repeat the first -- do I have any --

9 Q Yes.

10 Do you have any knowledge or recollection
11 of any improper -- which I realize is a loaded word --
12 but inappropriate communication of confidential
13 Resolution Trust Corporation information?

14 A I have no recollection.

15 MR. COLE: Thank you. I have no further
16 questions.

17 MR. GIUFFRA: Just one more question.

18 FURTHER EXAMINATION

19 BY MR. GIUFFRA:

20 Q Mr. Gray, during your tenure as White
21 House counsel, did anyone from the counsel's office
22 provide any legal services in connection with private

1 investments of President or Mrs. Bush?

2 A None that I know of.

3 Q Would that have been a proper use of the
4 services of personnel in the White House counsel's
5 office?

6 A I think it would not have been proper.

7 Q Would that have been highly unusual?

8 A I think it would have been highly unusual.

9 MR. GIUFFRA: No further questions.

10 FURTHER EXAMINATION

11 BY MR. COLE:

12 Q Just to follow up on Mr. Giuffra's line of
13 questioning, you referred to personal legal work for
14 President or Mrs. Bush.

15 Could you describe how in your role as
16 White House counsel you would have distinguished
17 between what was personal and what was nonpersonal
18 legal work?

19 A I mean, we did not draw up a definition of
20 it. I just, I tried -- I don't know if I could add to
21 what I said.

22 If it involved President or Mrs. Bush, or

1 extended family in their personal capacity, advice
2 about tax returns, advice about storm damage to the
3 house in Maine, advice about book royalty treatment
4 for a book that Mrs. Bush wrote, the book MILLIE or
5 whatever the name of it was, matters of that kind we
6 did not advise on.

7 We were occasionally asked questions,
8 especially in connection with the taxes, you know,
9 maybe four or five questions over the 12-year period.
10 There were questions, as I recall, about some special
11 fund that was provided for the First Lady -- gosh, I
12 mean, the First Family gets -- I think it came up only
13 in 1992; I may have been asked a question about that,
14 but by and large the answer is we had no role in such
15 matters.

16 Q Did you or your office provide President
17 and Mrs. Bush with legal advice concerning their
18 public disclosure or reporting obligations as
19 President and First Lady?

20 A I think the answer to that question is,
21 no, we did not work on their disclosure forms. That,
22 again in my recollection, was all done by Terry Lacy,

1 who was the lawyer for most of the Bush Presidency.

2 Q Perhaps I should rephrase my question.

3 I wasn't asking if your office prepared
4 the disclosures or forms. I was asking whether you
5 provided advice as to what the legal requirements are
6 that were incumbent upon the President --

7 A -- may have. May have, yes.

8 Q And is it fair to say that there would be
9 some legal judgment involved as to determine what
10 would be a personal matter and what would be a public
11 matter relating to the First Lady?

12 A Sure. I suppose there could be
13 questions that weren't obviously and easily resolved,
14 but I don't recall there being any big debates about
15 it.

16 Q But it's fair to say, is it not, that
17 there is no bright line for the President in terms of
18 what is personal and what is private in the sense
19 that he works 24 hours a day as the President and
20 has numerous disclosure and public reporting
21 obligations?

22 A Well, I think the tax, the blind trust,

1 those issues were pretty private and he would have
2 meetings with his private counsel to which I would
3 not be a party.

4 There would be, perhaps at the end of his
5 session, Terry Lacey might have come up from Houston,
6 and she might have met with him for an hour or two,
7 and then we might have all had lunch and discussed
8 matters of general sort of interest, but the business
9 portion of the meeting I would not have been
10 included.

11 Q Did Mr. Lacey consult with you or --

12 A "Ms.," Ms., Ms. She is a woman.

13 Q -- Ms. Lacey, excuse me, consult with you
14 or others in your office about what the requirements
15 under Federal law were that applied --

16 A Yes. I say, I think we were consulted,
17 asked from time to time, a detailed question about
18 this or that. But it was -- we were providing
19 information, not decisional input.

20 MR. COLE: Thank you. I have no further
21 questions.

22 MR. GIUFFRA: One other question.

1 FURTHER EXAMINATION

2 BY MR. GIUFFRA:

3 Q Insofar as you were aware, were files
4 maintained in the counsel's office during the Bush
5 Administration relating to the President's income tax
6 returns, in the counsel's office?

7 A I don't think so.

8 Q Would files have been maintained in the
9 counsel's office during the Bush Administration with
10 regard to personal investments of the President?

11 A I don't think so.

12 Q Would files have been maintained in the
13 counsel's office during the Bush Administration with
14 regard to the President's residence in Maine in your
15 office?

16 A No, I don't think so.

17 Q Would files have been maintained in the
18 counsel's office during the Bush Administration with
19 regard to the President's blind trust?

20 A No.

21 Q Those are all files that would have been
22 maintained by the President's personal attorney?

30

1 A He may have had files of his own in the
2 residence on that, both when he was living in the
3 Vice President's residence and in the White House.
4 He may have had his own files there, but there were
5 no such files to my recollection in my office, or my
6 office complex.

7 MR. GIUFFRA: Thank you very much.

8 MR. COLE: I know you have heard this
9 before, but one final question.

10 FURTHER EXAMINATION

11 BY MR. COLE:

12 Q If the President had asked you to hold or
13 review any of the kind of files that Mr. Giuffra just
14 described while you were serving as Counsel to the
15 President, would you have done so?

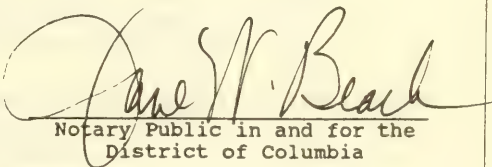
16 A I haven't been asked that, and I don't
17 know what the answer would be.

18 I never was asked.

19 MR. COLE: Thank you. No further
20 questions.

21 (Whereupon, at 3:15 p.m., the deposition
22 was adjourned.)

I, JANE W. BEACH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
District of Columbia

My Commission Expires NOVEMBER 14, 1996

**DEPOSITION OF L. RICHARD IORIO
IN RE: S. RES. 120**

FRIDAY, OCTOBER 20, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of L. RICHARD IORIO, called for examination pursuant to notice of deposition, at 1:18 p.m. in Room 428-A of the Russell Senate Office Building, before CARMEN M. BUNCH, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, Esq.
Majority Associate Special Counsel
ALICE S. FISHER, Esq.
Majority Deputy Special Counsel
NEAL E. KRAVITZ, Esq.
Minority Principal Deputy Special Counsel
TIMOTHY P. MITCHELL, Esq.
Democratic Professional Staff Member
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

JOSEPH H. BABCOCK, Esq.
McAfee & Taft
2 Leadership Square
Tenth Floor
Oklahoma City, OK 73102
On behalf of the Deponent.

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P R O C E E D I N G S

MR. BARTOLOMUCCI: Before we begin the questioning, there are some preliminary matters I need to read in for the record. This deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Banking Committee to conduct an investigation of Whitewater Development Corporation and certain other related matters.

Section 1(b)(2) of the resolution authorizes investigation and hearing into, among other things, whether any person has improperly handled confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation, whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty or Whitewater and whether RTC employees have been improperly prevented, restrained or deterred in conducting investigations or making enforcement recommendations relating to Madison Guaranty or Whitewater.

4

Section 1(b)(3) of the resolution authorizes investigation and public hearings into, among other things, the operation, solvency and regulation of Madison Guaranty and into the activities, investments and tax liability of Whitewater. These issues will be the primary focus of today's deposition.

You were requested to come to be deposed on October 6, 1995. This deposition is being conducted in advance of public hearings to be held at a later date. You may or may not be called to testify at those hearings. I'll be asking you questions under oath. If you don't understand a question, please let me know and I'll rephrase it. Tell me if you need to break and we will take one.

The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings. Prior to the hearings, you will receive a letter from the committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any

1 corrections for transcription on an errata sheet. If
2 you are called to testify at a public hearing, you
3 will be permitted to have a copy of your deposition
4 transcript four days in advance.

5 You are represented by counsel today, as
6 you were permitted to be. Objections to form of
7 questions may be noted for the record. Counsel may
8 object on grounds of privilege or scope, and the
9 committee chairman may rule on objections if you
10 refuse to answer a question.

11 Would you please swear in the witness now.
12 Whereupon,

13 L. RICHARD IORIO

14 was called as a witness and, having first been duly
15 sworn, was examined and testified as follows:

16 MR. BARTOLOMUCCI: Off the record.
17 (Discussion off the record.)

18 EXAMINATION

19 BY MR. BARTOLOMUCCI:

20 Q Mr. Iorio, I would like to start with your
21 background. You are currently employed by the
22 Resolution Trust Corporation?

1 A That is correct.

2 Q And would you state your current position
3 with the RTC?

4 A Director of field investigations for the
5 Resolution Trust Corporation's Kansas City, Missouri
6 office.

7 Q How long have you held that position?

8 A Since July of 1992.

9 Q And prior to that time, you held a similar
10 position in the Tulsa office; is that correct?

11 A I was an assistant director for
12 investigations in the Tulsa office from August of '90
13 to July of '92.

14 Q What is the nature of your current
15 responsibilities, just generally?

16 A The Kansas City office is responsible for I
17 think it's a 21-state area, and we would be
18 responsible for any investigative efforts in the
19 areas that we investigate in those 21 states in
20 failed savings and loan institutions.

21 Q And could you tell us what major work
22 experiences you've had prior to coming to the RTC?

1 A Well, I haven't had that many so I'll just
2 give you all of them. That will make it a little
3 simpler, I think. When I graduated from law school,
4 I worked for the University of Oklahoma in a legal
5 capacity for about a year. Then I was with the FBI
6 for 3-1/2 years. I was in the legal department of
7 the United Airlines in Chicago for three years. And
8 then I was in the legal department and industrial
9 relations department at Union Pacific Corporation for
10 nine years, in banking, for 3-1/2 years and then to
11 the RTC.

12 Q You say you were in banking. Am I correct
13 that you were the president of a bank?

14 A Yes, I was.

15 Q When you were with the FBI, you were an
16 agent?

17 A Special agent, yes.

18 Q So I would think you're highly qualified to
19 conduct investigations into banks.

20 MR. KRAVITZ: Is that a question?

21 MR. BARTOLOMUCCI: Yes.

22 THE WITNESS: I think so.

1 BY MR. BARTOLOMUCCI:

2 Q Can you tell me how successful the Kansas
3 City office has been under your leadership in
4 uncovering and bringing to justice ultimately those
5 who are criminally responsible for the insolvency of
6 S&Ls and how successful your office was in recovering
7 fines or restitutionary orders?

8 MR. BOCOCK: Your question is compound and
9 overbroad. What do you mean exactly by "successful,"
10 how many people were prosecuted, things like that?
11 He has that information, I think.

12 MR. BARTOLOMUCCI: Right. I would like to
13 know number of --

14 THE WITNESS: Dollars?

15 BY MR. BARTOLOMUCCI:

16 Q Number of dollars, persons prosecuted, just
17 a general sense of the office's success.

18 A The Kansas City office, as of earlier this
19 week, has recovered approximately \$221 million. Of
20 that \$221 million, slightly over \$10 million was due
21 to criminal restitution orders, fines and recoveries
22 where we've actually had cash in hand. Still out

1 there, being in the process of being collected, are
2 probably another 20-, \$22 million on the criminal
3 side.

4 On the civil side, pending claims is
5 probably maybe another 50-, \$60 million in claims
6 that are still on -- we have potential to recover. I
7 don't know that we will, but that's a figure.

8 With regard to individuals, we really don't
9 track it by individual. We sort of track it by
10 dollars. I will say that on the criminal side, we
11 have 200 separate restitution orders that we track.
12 A restitution order is usually per individual, so
13 there are approximately 200 people through the
14 criminal process that owe us money and are paying us
15 in some fashion or form, and we track that on a
16 monthly basis.

17 Q Are you satisfied with the success of your
18 office in these matters during your leadership?

19 A Oh, some days yes, some days no.

20 Q What are you going to do when the RTC wraps
21 up its mission?

22 A I don't know. We're supposed to go away

10

1 the end of December, December 31, so I have been
2 looking around a little bit, but I really don't know.

3 Q Do you recall when your office commenced an
4 investigation of Madison Guaranty?

5 A Yes.

6 Q When was that?

7 A That would be in March of 1992. That would
8 have been at the Tulsa office.

9 Q The Tulsa office. And then it was later
10 transferred to the Kansas City office?

11 A That's correct.

12 Q Was there a particular event or occurrence
13 that triggered the investigation or kicked it off?

14 A Well, there were really like two requests
15 came for us to conduct the investigation, and that
16 was, I think what commenced that was The New York
17 Times article, Jeff Gerth's article on Whitewater.

18 Q That was in 1992?

19 A That was in March of '92, yes.

20 Q Skipping ahead in time, as a result of your
21 office's investigation of Madison, a total of 10
22 criminal referrals related to Madison issued from

1 your office?

2 A That's correct.

3 Q Now I want to step back in time a little
4 bit. Do you recall what year Madison became
5 insolvent?

6 A Gosh. '85, '86, '87. I don't really know.

7 Q And --

8 A It's not so much when they became
9 insolvent. It's when they declared and they're
10 turned over, the system turns them over. That's the
11 only thing --

12 MR. BOCOCC: I'm sure that's what counsel
13 meant.

14 BY MR. BARTOLOMUCCI:

15 Q Exactly so. And it was at approximately
16 that time that James McDougal was removed as
17 president of Madison?

18 A I think he was removed prior to that time.

19 Q And shortly thereafter, a report was
20 prepared by Borrett & Huggins pertaining to Madison
21 Guaranty?

22 A Yes, Borrett & Huggins.

12

1 Q What I'm interested in is what happened
2 between those events of the late '80s and 1992 with
3 respect to Madison. Could you tell me what the RTC
4 was doing, if anything, with respect to Madison
5 during those years?

6 MR. BOCOCC: Okay, let me make sure I
7 understand your question. You're asking him what did
8 the RTC do between sometime in 1980s and 1992?

9 MR. BARTOLOMUCCI: Yes, with respect to
10 Madison.

11 MR. BOCOCC: At what point in the 1980s?

12 MR. BARTOLOMUCCI: Following the
13 declaration of insolvency, et cetera.

14 MR. BOCOCC: That's fine.

15 THE WITNESS: When Madison was declared
16 insolvent and passed through receivership, that was
17 prior to when the RTC came into existence, so that
18 initial handling of Madison was done by the FDIC.
19 And as I recall, I think that was out of the old
20 Minneapolis office that handled the initial Madison
21 matters. Later the RTC is formulated and the shops
22 that the FDIC handled then get passed to the RTC.

1 They came to the old Kansas City office and then as a
2 result of reorganization, I think in January of '91,
3 we inherited the 18 -- the Tulsa office inherited the
4 18 failed Arkansas thrifts.

5 BY MR. BARTOLOMUCCI:

6 Q Was the FDIC investigating Madison during
7 that time period, to your knowledge?

8 A Yes, they had -- they did a preliminary
9 review, generated some reports and had done some work
10 on the institution, yes.

11 Q Do you know who prepared such reports?

12 A Yes, it was an investigator in Minneapolis,
13 but off the top of my head, I can't think of his
14 name. He's no longer with either the RTC or the
15 FDIC, but he's still in the Minneapolis area.

16 Q Could that have been Wyatt Adams?

17 A No. Wyatt Adams was an investigator in
18 Tulsa.

19 Q Did any criminal referrals issue as a
20 result of the FDIC's investigations during that time?

21 A Not to my knowledge, no.

22 Q Was the --

1 A But I need -- well, I need to probably
2 clarify that.

3 Q Please.

4 A The initial work that was done on Madison
5 was under the civil area, not the criminal area, and
6 the civil aspects had been looked at and the
7 investigations had been closed, so Madison was on a
8 list to be worked, but we hadn't got to Madison yet.

9 Q So you think the FDIC's investigation was
10 of a civil nature?

11 A Yes.

12 Q To your knowledge, was your investigation
13 the first criminal investigation of Madison?

14 A I think so.

15 Q Was the Office of Thrift Supervision
16 investigating Madison, to your knowledge, during that
17 same time period?

18 A I don't know, and I don't know if the
19 predecessor, which would have been FSLIC, I don't
20 know if they had done anything either.

21 Q Have you heard of a 1986 OTS 407
22 investigation of Madison?

1 A I kind of remember that one, yeah.

2 Q Do you remember anything about it that you
3 can expand upon?

4 A That maybe resulted -- that maybe is the
5 one that resulted in the criminal case against
6 McDougal back in the middle to late '80s, somewhere
7 in there.

8 Q The one that went to trial in 1989 or so?

9 A And then I think he was found not guilty,
10 yes.

11 Q When you began your investigation, your
12 office's investigation of Madison, did you have work
13 product from FDIC, OTS?

14 A We had some work product, not very much.
15 Very little work product from FDIC. I think we had
16 some court documents on the McDougal trial, but we
17 didn't have very many documents, no.

18 Q You said earlier that your office's
19 criminal investigation of Madison began in 1992. Who
20 actually requested the investigation or within the
21 RTC, who actually made the decision that Madison
22 would be investigated?

1 A The request came from the Washington office
2 of investigations, down to Kansas City and then down
3 to Tulsa. That was within the chain of command on
4 the investigation side. I think also at the same
5 time or very close, simultaneously, almost
6 simultaneously, the director of the Tulsa office also
7 requested that we take a look to see if there was any
8 substance to the Gerth article.

9 Q So if I heard you correctly, the initial
10 movement to investigate Madison following the Gerth
11 article came from Washington and simultaneously from
12 the head of the Tulsa office, then down to you?

13 A Yes.

14 Q And so then you supervised the actual
15 investigation itself?

16 A Uh-huh, yes.

17 Q Who did you assign that case to to do the
18 fieldwork, if you did the assignment?

19 A That -- see, the institution was already
20 assigned, and that institution was assigned to Jean
21 Lewis. Could have been a combination between Jean
22 and Wyatt, that's the name you mentioned earlier, but

1 one or both of them.

2 Q You mean to tell me that Jean Lewis had
3 responsibility over Madison even before this decision
4 in Washington and Tulsa was made to really start
5 looking into it, it was already slated for her?

6 A You assign each investigator so many
7 institutions and you prioritize the institutions, and
8 they work them as they get to them. That one I think
9 was hers.

10 Q Though later on other persons also
11 investigated Madison from your office?

12 A In Kansas City, yes.

13 Q But that was not until later?

14 A Uh-huh. Well, I think Wyatt Adams helped
15 her a little bit early on in Tulsa. Then Wyatt did
16 not -- when the Tulsa office closed, he didn't move
17 to Kansas City, so his amount of input was minimal.

18 Q We spoke earlier of the prior
19 prioritization of the thrifts. I take it once the
20 word came down from Washington and from Tulsa that
21 Madison was to be investigated, it became of higher
22 priority?

1 A Yes.

2 Q During the course of Jean Lewis's and the
3 Madison team's investigation of Madison, do you know
4 who your investigators spoke to, if anyone, in Little
5 Rock?

6 A Most of the work that they did was of a
7 forensic nature where they were looking at documents
8 and records. If they talked to anyone, I don't think
9 they did. It was simply reviewing documents.

10 Q So you don't think they conducted any
11 interviews of persons?

12 A They might have talked to some of the
13 people who had been involved in the Borrett & Huggins
14 report, but off the top of my head, I don't --
15 possibly, but I just don't remember.

16 Q Is that standard practice in investigating
17 a thrift to focus solely on the documents?

18 A Yes, because generally the individuals
19 won't talk with us so we have -- we pretty much have
20 to rely on the documents that are at the institution.

21 Q Was anybody outside of the RTC involved in
22 the investigation process at that point?

1 MR. BOCK: This point is?

2 BY MR. BARTOLOMUCCI:

3 Q Prior to the submission of the first
4 criminal referral.

5 A Outside of the RTC?

6 Q Were you assisted by any nonRTC personnel?

7 A No, not that I recall, no.

8 Q Skipping ahead somewhat, after the second
9 set of referrals, the nine referrals, were submitted,
10 what, if anything, did the Madison team do? Did they
11 conduct any further investigations or was that the
12 end of it?

13 A Not the criminal investigators. After they
14 finished the referrals, they did not do any
15 additional investigation. They were involved in
16 subpoena compliance, but not anything with an
17 investigation.

18 Q I want to turn now to the issue of what you
19 found, what you uncovered in your investigation of
20 Madison. Can you generally describe what you
21 uncovered, what the goings-on at Madison were?

22 A Generally. One of the referrals dealt with

20

1 kiting. We had -- actually you call them illegal
2 loans, we had fundings that were questionable, just
3 same kind of stuff that we had seen at other
4 institutions. I mean, it's nothing unique.

5 Q Can you characterize the management of
6 Madison, how it was being run?

7 A It wasn't being run properly.

8 Q And is it your opinion, in fact, it was
9 being run in a criminal fashion?

10 A Some of the allegations in the referrals
11 raised that issue, yes.

12 Q I take it that, and correct me if I'm
13 wrong, when you commenced the investigation of
14 Madison, you had a certain theory or idea of what you
15 might find, of what criminal activity there might
16 have been?

17 A No, you really don't. Sometimes the
18 examiners will have come across things or if you're
19 there when the institution is closed, maybe one of
20 the employees will say something to you, but many
21 times you don't have that, so we have more or less an
22 investigative procedure we go through. We look at

1 certain things, and it's wide enough that if certain
2 things are there, you keep going, but many times we
3 have no idea if there's anything wrong in an
4 institution of a criminal nature until we look.

5 Q Did you ultimately come to suspect some
6 criminal activity that you just couldn't document?

7 A If we can't document it, then we leave it
8 alone, because our purpose is to document it well
9 enough to submit a referral. If we can't document
10 it, then we just leave it.

11 Q Nonetheless, I imagine you must have some
12 suspicions initially that then you go in search of
13 supportive documents?

14 A Well, you will see things that make you
15 think, well, if this happened, I wonder if
16 such-and-such-and-such happened, and you would go
17 look for the appropriate documents. You can do that,
18 yes.

19 Q Can you briefly describe the role of James
20 and Susan McDougal in Madison and in the suspected
21 criminal activity at Madison?

22 A Well, he was the president of the

22

1 institution, and I -- she was marketing director,
2 advertising director, I forget exactly what her title
3 was. You know, I think basically he didn't honor the
4 integrity of the institution. He used the
5 institution like the funds were his. And that was
6 the basic -- that was his basic operation.

7 Q And he was really in charge of Madison, he
8 ran the thrift?

9 A Yes.

10 Q And can you tell me what the role of or how
11 Whitewater Development Corporation features in these
12 matters?

13 A Whitewater Development Corporation is just
14 another one of his entities, one among many, a land
15 development thing that just simply didn't make it
16 that he had to support to keep it from being
17 foreclosed on, you know. It's really a fairly simple
18 issue.

19 Q And his partners in that corporation were
20 the Clintons?

21 A Yes.

22 Q I know that the first referral, the C0004

1 referral, cites the Clintons as persons who may have
2 benefited from the suspected criminal activity. Was
3 that documented in some way?

4 MR. BOCOCK: I think your question is --

5 MR. BARTOLOMUCCI: I would like to rephrase
6 that, if I may.

7 MR. BOCOCK: Your question would be what
8 documents support that conclusion, wouldn't it?

9 MR. BARTOLOMUCCI: No, I don't want to even
10 rephrase it that way.

11 BY MR. BARTOLOMUCCI:

12 Q What is the basis for the belief that the
13 Clintons benefited from -- could have benefited from
14 the criminal activity that was being suspected?

15 A They were receiving the benefit of the
16 payments on the mortgage, and they weren't making
17 those payments themselves.

18 Q Who was making the payments?

19 A McDougal.

20 Q And they benefited by being partners in the
21 corporation without apparently putting anything into
22 it?

1 A Right.

2 Q Did you uncover any evidence that the
3 Clintons knew about the suspected criminal activity
4 that you uncovered?

5 A That's -- direct evidence, no.

6 Circumstantial evidence, yes.

7 Q Do you know how the McDougals were making
8 payments on Whitewater, what sort of funds they used?

9 A Well, sometimes they would overdraft the
10 account and he would force pay it as an overdraft and
11 the money would just roll out. If you're in an
12 institution and you can control which checks get
13 paid, whether there's money to cover the checks or
14 not, there's a lot that you can do, and that was one
15 of the primary ways that he made those payments.

16 Q Can you describe the role or how Jim Guy
17 Tucker features in these matters?

18 A He was involved in a land development
19 project, and I can't remember who else was in there
20 with him, there were a couple others, but he was a
21 customer.

22 Q What about former Senator Fulbright?

1 A I don't think former Senator Fulbright was
2 a customer. I think he did some work for the
3 institution and was paid for that work.

4 Q He figures in some of your criminal
5 referrals?

6 A There are some questions with regard to how
7 he was paid, the source of the funds, again.

8 Q So if I have this right, there are a number
9 of important political figures who seem to be in
10 Madison's orbit. There are the Clintons, Fulbright,
11 Jim Guy Tucker. Is that a fair characterization,
12 that there are just a number of political figures who
13 were involved in Madison and in the criminal activity
14 that you suspected?

15 A Yes.

16 Q Do you think that all of the criminal
17 activity that you suspected at Madison could have
18 gone on without some sort of political influence
19 being brought to bear?

20 MR. BOCK: Again, Mr. Iorio, if you know
21 the answer to these series of questions which call
22 for extreme speculation, you can give it to him, but

26

1 if you don't know, only tell him what you know.

2 BY MR. BARTOLOMUCCI:

3 Q If you think it's speculation. In your
4 opinion as someone who knows how S&Ls operate and how
5 they operate legally, do you think a thrift like
6 Madison could have been operated as it was without
7 some sort of help from outside?

8 A That's a very general question. If we
9 would get to the specifics with regard to the
10 administration of the institution by the organization
11 within the state or the government that's responsible
12 for monitoring it, that's probably narrowing it down
13 a little more, okay, but to say -- I can't answer
14 that question affirmatively. It would be very
15 speculative for me to say that because we just -- you
16 know, that's not what we look for.

17 Q You have no direct evidence of it?

18 A No, no.

19 Q What are the state institutions that have
20 primary responsibility for regulating Madison?

21 A Well, in Arkansas there was a state agency
22 that monitored the savings and loans, and that was

1 the same in a lot of states. And the person that
2 heads that agency is appointed by the governor of the
3 state. That's also true in a lot of states. I think
4 this particular time, the time in question, I think
5 Beverly Bassett Schaeffer was -- I might be wrong,
6 but I think for a period of time she was there.

7 There have been other people before and after her.

8 Q If I heard you right, she was appointed by
9 then Governor Clinton?

10 A I think she was, yes.

11 Q Do you know what her prior relationship, if
12 any, to the Clintons was?

13 A No, I do not.

14 Q But she and her organization had large
15 responsibility for regulating Madison?

16 A Yes, they did.

17 MR. BOCOCCO: Let me interject something
18 here. Mr. Iorio is delighted to be here and answer
19 everyone's questions about this, but I think we have
20 to keep in mind that he is an investigator of
21 specific criminal wrongdoing. He's an unusually
22 well-informed private citizen, and part of that is

1 because of his role as an investigator. He reads
2 newspaper clippings. I'm sure he could give you a
3 wonderful story about whether the regulator of the
4 Arkansas thrift was in bed with the Clintons or not.

5 I certainly have my opinion on that, but
6 that's not really the focus, it seems to me, of this
7 investigation. The investigation is what he did and
8 what he knows about his work, and the reason I'm
9 concerned is because having been through this with
10 Mr. Iorio before, I know that there are going to be
11 this huge bank of people armed with White House
12 communiques every five minutes trying to discredit
13 his credibility on anything, and so if we try to make
14 Mr. Iorio an expert on everything that has to do with
15 Madison Guaranty, you're not going to be successful.

16 Mr. Iorio knows a lot more than we do, but
17 he's just head of field investigations for RTC. The
18 person, if you want all the nitty-gritty, you need to
19 ask Jean Lewis, the investigator, two levels below
20 Mr. Iorio. And if you want to know questions like
21 was political influence involved in the improper use
22 of Madison, which is a very legitimate inquiry, this

1 isn't the guy to ask. He doesn't know anymore about
2 it than I do. You could ask me, but I don't want to
3 tell you either because I don't want to be exposed to
4 a committee where someone is put on the witness stand
5 as an expert who really knows less than you do. You
6 know how to answer that question a lot better than
7 Mr. Iorio does, I hope you do.

8 MR. BARTOLOMUCCI: The purpose of this is
9 to find out what Mr. Iorio knows. If he doesn't know
10 something, I suspect that he will say that.

11 MR. BOCOCK: The difficulty is that I think
12 he's trying to be very helpful to answer your
13 questions and he really will. He is going to tell
14 you the answers.

15 MR. BARTOLOMUCCI: And he has to.

16 MR. BOCOCK: But I, as his counsel, am
17 uncomfortable with you asking him questions like what
18 was the cause of the Sino-Soviet rift when he's
19 really --

20 MR. BARTOLOMUCCI: I didn't hear that
21 question.

22 MR. KRAVITZ: It's coming next --

1 MR. BOCOCK: May be coming next. Again, I
2 don't mean to be ornery and I certainly don't want to
3 disrupt the proceedings and I appreciate what you're
4 trying to do, but I think it would help if you could
5 narrow the scope of your questions just a little bit.

6 MR. BARTOLOMUCCI: Fair enough.

7 MR. BOCOCK: To the points at issue here.
8 I've been through, I don't know how many hours of
9 this and there's lots of questions to ask that relate
10 to what he does.

11 BY MR. BARTOLOMUCCI:

12 Q It has been charged, I believe, that your
13 office spent a disproportionate amount of time
14 investigating Madison. I think we're going to not
15 get to that question now. I'm going to go slightly
16 out of the order I had intended because someone is
17 here to retrieve a document that I wanted to ask you
18 about. So I have an E-mail dated January 14, 1994
19 from James R. Dudine to you. I wonder if you could
20 read the text of the E-mail into the record.

21 MR. KRAVITZ: Can you tell us what the
22 number on that is so we might have a chance to look

1 at it, too?

2 MR. BOCOCK: RI 0104-S.

3 BY MR. BARTOLOMUCCI:

4 Q Would you now read the text of the E-mail?

5 A "I'm sending this E-mail to save on the
6 phone bill. In preparation for a briefing of CEO
7 Altman on the Madison criminal referrals, could you
8 produce or have you on hand a brief summary of each
9 referral in plain English that tells the story in a
10 way that everyone can quickly grasp the substance of
11 the matter. Sound bites, if you will."

12 Q Do you remember receiving this?

13 A Yes.

14 Q And did you provide these summaries?

15 A What we did is we provided the synopsis off
16 of the referral, which is like a paragraph, to be big
17 paragraph, little paragraph, medium paragraph. I
18 think we provided those because we didn't feel like
19 that you could go much shorter than that and still
20 have the essence of the referral. Now, I think that
21 he had someone on his staff in Washington condense
22 that even further, but the Kansas City office did not

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1 do that.

2 Q Do you know whether or not, in fact, he did
3 brief Mr. Altman?

4 A He told me that he did not.

5 Q At the time when you received this, did you
6 think it strange or unusual that there might be a
7 briefing of Mr. Altman on the subject of these
8 referrals?

9 A I really didn't think much about it because
10 we had gone through another reorganization, and I
11 didn't know -- I didn't know if that was -- I had no
12 idea.

13 Q In your experience, would the CEO
14 ordinarily take an interest in particular criminal
15 referrals?

16 A Yes and no. If it was -- if it involved an
17 unusual amount of money or publicity or public
18 figure, they were interested so that they wouldn't
19 get blindsided, so it wouldn't have been, you know,
20 terribly out of line.

21 Q You told me that Mr. Dudine said he did not
22 brief Mr. Altman. Did you subsequently come to learn

1 whether or not there was a briefing?

2 A No, I did not.

3 MR. KRAVITZ: Just as an explanation of why
4 the document has to leave the room, some of our
5 documents we're not allowed to copy and it's probably
6 needed in another deposition.

7 MR. BARTOLOMUCCI: I'm going to go ahead
8 with -- are you finished with that?

9 MR. BOCOCK: Excuse me, yes.

10 BY MR. BARTOLOMUCCI:

11 Q We're going to return to the issue of the
12 times the Kansas City office spent investigating
13 Madison and respond to issues of whether that was
14 disproportionate. How did you decide to allocate
15 time spent in investigating particular institutions?

16 A Well, you worked -- I've got to give you
17 answers to a couple of questions to get to the answer
18 that you want, okay?

19 Q Sure.

20 A You worked the short statute claims first,
21 so the civil claims get worked first because they
22 have got a three-year statute. The criminal matters

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1 are a 10-year statute, so you don't put many people
2 on the criminal work early because you've got an
3 extended period of time.

4 So once you get your civil work under
5 control, then you start pushing your people over to
6 the criminal side.

7 Is it unusual to put more than one person
8 on an institution? No. Do you do it a lot? No, not
9 really. It depends upon the institution, but we have
10 had to do that previously.

11 Q I have here an excerpt from your testimony
12 before the House Banking Committee on August 8,
13 1995. I wonder if you could read into the record the
14 portion that I have highlighted.

15 A Okay.

16 Q I hope you will recall that as your
17 testimony.

18 A "There has been much said about how much
19 time we spent at Madison, and we have furnished reams
20 and reams of information to the committee. And I
21 went back, took some time and figured how much time
22 we spent where and how it all looked together.

1 Madison criminal referrals accounted for 47 percent
2 of all investigative hours spent by the criminal
3 investigations department in 1993. Of all
4 institutions investigated by the criminal department
5 in Arkansas in 1993, 86 percent of the total
6 investigative hours were spent at Madison. Bear in
7 mind I am talking strictly about Arkansas. Only 11
8 percent of all the hours attributable to all of
9 investigative functions for the Kansas City office in
10 1993 were directed toward Madison so there was much
11 else that was done -- that we were doing besides
12 working on the Madison referrals."

13 Q These figures were correct when you stated
14 them?

15 A Yes, they were.

16 Q And you stand by them?

17 A Yes, I do.

18 Q Do you have anything to tell us by way of
19 updating or elaboration?

20 A We don't have many claims left in the
21 Kansas City office. I would say 85 to 95 percent of
22 our work is completed, and we will be turning over a

1 small percentage of work to the FDIC at year end, so
2 no, this is accurate.

3 Q So is it fair to say, then, that in 1992
4 and 1993, there just weren't that many thrifts under
5 the jurisdiction of the Kansas City office that were
6 being investigated?

7 A No, we were doing a lot of investigative
8 effort. We had civil claims that were being
9 investigated, civil fraud claims were being
10 investigated and criminal claims were being
11 investigated, so the whole variety of investigations
12 were still going on.

13 Q In your opinion, was a disproportionate
14 amount of time being spent investigating Madison?

15 A We spent as much time as we needed to get
16 the job done.

17 Q When you factor in that that was time not
18 spent investigating other thrifts, it's still your
19 opinion that it was not disproportionate?

20 A Yes.

21 Q It was time well spent?

22 A Yes. As of September -- no, no, not as of

1 September 30. As of Monday, this past month, we have
2 five remaining criminal claims to investigate before
3 the end of the year. That's all we have left. So I
4 don't think anyone can say that we didn't complete a
5 job by doing the criminal work.

6 Q Your office issued 10 criminal referrals on
7 Madison. Did you -- was there any other thrift of
8 comparable size that had as many criminal referrals?

9 A Size is really not a relevant determining
10 factor. The size of the institution is not a good
11 indicator of how much criminal activity there might
12 have been there. We have had other institutions that
13 have had as much criminal work, not all of it done by
14 us, some of it was done before we inherited them, but
15 that's -- to the best of my recollection, we have
16 other institutions that have had more criminal
17 referrals come out of them than Madison, some -- and
18 I think they're all larger than Madison.

19 Q You told us earlier that the investigation
20 of Madison heated up following The New York Times
21 Gerth article. Do you think that public attention is
22 a legitimate reason for prioritizing investigation of

1 a thrift?

2 A Well, we were going -- I think as I recall
3 it was going to be worked in December and it got
4 moved up and was worked in March.

5 Q So it was slated for investigation in any
6 event?

7 A Yes, anyway, and we got to it nine months
8 earlier. I don't know that -- that wasn't my call.

9 Q Right, that order came from Washington?

10 A Yes.

11 Q Did anyone above you in the chain of
12 command ever say that you were spending too much time
13 investigating Madison?

14 A No, not within my chain of command, no.

15 Q Did anyone even -- in your chain of command
16 even suggest that to you?

17 A No.

18 Q How bad -- in terms of criminality, how bad
19 do you think Madison was compared to other thrifts
20 that you investigated?

21 MR. KRAVITZ: Can you explain what you mean
22 by "bad"?

1 MR. BOCOCK: And by other thrifts.

2 MR. BARTOLOMUCCI: As I said, criminality.

3 MR. BOCOCK: Are you talking about other
4 thrifts that resulted in criminal referrals or the
5 average thrift failure or what? I don't think the
6 average thrift involves criminal acts, but I'm not so
7 sure anymore.

8 BY MR. BARTOLOMUCCI:

9 Q In comparison to other S&Ls that were
10 criminally investigated, what was the -- in
11 comparative terms, what was the level of criminal
12 activity at Madison?

13 A It wasn't the worst that I have seen, nor
14 was it the best, okay, in a negative sort of way. On
15 a scale of 1 to 10, maybe it was a 5 or 6 or 7,
16 somewhere in there.

17 Q But certainly worthy of investigation?

18 A Oh, yes, yes.

19 Q And issuance of criminal referrals?

20 A Yes.

21 Q I want to -- would you like to add
22 something?

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1 A Yes, I need to say something here. One of
2 the reasons that we do criminal referrals, okay, is
3 not only to seek appropriate criminal sanctions, but
4 we also seek to recover money in restitution orders.
5 We haven't recovered any money yet out of the Madison
6 referrals, but I feel comfortable that there will be
7 recoveries from those referrals.

8 Q I would like to shift focus to the time
9 period following the submission of the first Madison
10 referral, that was in 1992?

11 A Yes.

12 Q Following the submission of a referral, is
13 it ordinary for the investigators to receive some
14 kind of a response from the Department of Justice,
15 FBI, whoever it was submitted to?

16 A Yes. We usually operate on, oh, I would
17 say maybe a 90-day cycle, within 90 days we usually
18 hear something, either formally or informally.
19 However, this was at an election time, United States
20 attorneys were changing, so we anticipated it would
21 take longer, simply because of everything that was
22 going on.

1 Q But in the ordinary case, you would often
2 hear something within 90 days or so?

3 A Yes.

4 Q When you say hear something, does that mean
5 a decision that further investigations will be
6 undertaken or not or merely an acknowledgment within
7 90 days?

8 A Well, you will get an acknowledgment,
9 you'll get a phone call. It can be -- generally
10 they're phone calls. They want to know what kind of
11 documentation have you got. It's rather informal.

12 Q And is it also standard operating procedure
13 for your people to follow up a referral after it's
14 been submitted and maybe initiate contacts?

15 A We will wait a reasonable period of time,
16 because we're carrying that as an open investigation,
17 and we have to account, just like I told you we've
18 got five claims left to do between now and the end of
19 the year, we have to account for what's open. And,
20 you know, if they're going to proceed on it, fine.
21 If they're not, fine. Just tell us so we can
22 document our file.

1 Q With respect to the Madison referral, did
2 you receive some sort of response within the ordinary
3 period of time?

4 A No.

5 Q What did you do when the ordinary period of
6 time elapsed or what happened?

7 A This is -- Jean Lewis was the investigator
8 that was responsible for that referral, and after a
9 reasonable period of time she started tracing to try
10 to find out what happened to the referral, where was
11 it, what was going to happen, so on and so forth.
12 And I think she commenced doing that February or
13 March of '93.

14 Q That is to say about six months after the
15 submission of the referral?

16 A Yeah, something like that.

17 Q So that's well beyond the ordinary time by
18 which you would have heard something about it?

19 A Yeah, but -- but in this particular
20 situation, because of the change in United States
21 attorneys, not -- we really -- we kind of anticipated
22 that.

1 Q You anticipated some delay?

2 A Yeah.

3 Q Do you know what she discovered, what she
4 found when she started to follow up the referral?

5 A Oh, there was quite a number of variety of
6 things. She had to spend a lot of time tracking that
7 down. She talked to a lot of people in Arkansas, a
8 lot of people in Washington, D.C. and finally we got
9 a declination on that in June or July of '93, I can't
10 remember, somewhere in there.

11 Q This declination from the U.S. Attorney at
12 the time, is that Paula Casey?

13 A Yes.

14 Q I want to show you a document numbered
15 006767. Is this the declination letter that your
16 office received?

17 A Yes.

18 Q What is the date on the letter?

19 A October 27, '93. I was off by a couple of
20 months.

21 Q So that, in fact -- this was the first
22 formal -- the only declination that you received with

1 respect to the referral, this was the first official
2 action notification that you received of any sort?

3 A Yes.

4 Q I note that the first paragraph of the
5 letter reads "I'm writing at the request of the
6 Office of Legal Counsel, Executive Office for U.S.
7 Attorneys, U.S. Department of Justice to let you know
8 the status of this referral."

9 Is there anything unusual about that
10 statement?

11 A I think the first paragraph is unusual and
12 I think the last paragraph is unusual.

13 Q With respect to the first paragraph, is it
14 unusual that this referral would have gone through
15 the Office of Legal Counsel, executive office?

16 A You know, I think this indicates the path
17 that the referral took and maybe that's why she
18 stated it the way she did. Usually an assistant
19 United States Attorney will sign the declination for
20 the United States Attorney. We usually -- sometimes
21 we see a United States Attorney signature, sometimes
22 we see AUSA signatures. So you just -- you know, but

1 I don't recall having seen that opening paragraph.

2 And this last paragraph is very unusual.

3 Q The one that reads "although I am declining
4 to take further substantive action on this referral,
5 my decision does not foreclose future prosecutions
6 about the matters covered by the referral or related
7 matters in the event that my office and the FBI are
8 given access to records or information indicating
9 that prosecutable cases can be made"?

10 A Uh-huh.

11 Q Why is that strange?

12 A Well, on this particular referral, they
13 knew the documentation and the evidence that we had,
14 okay. We send everything that we've got, so this
15 either makes or it doesn't make. All we wanted was a
16 yes or no answer.

17 Q So in your opinion, it was unusual to get a
18 response that was sort of a hedge, to say, well,
19 maybe we're saying no now, but maybe in the future if
20 we had more information?

21 A Uh-huh.

22 Q And particularly in light of the fact that

1 you had given them everything you had?

2 A Yes.

3 Q We've talked about the first paragraph and
4 the last paragraph. I would like to talk about the
5 middle paragraph, which begins "as you know, this
6 referral was reviewed by the criminal division of the
7 U.S. Department of Justice at the request of previous
8 United States Attorney for the Eastern District of
9 Arkansas."

10 In fact, did you know that this was -- had
11 been reviewed by the DOJ at the request of the
12 previous U.S. Attorney?

13 A I don't know that we knew this at that
14 time. I don't remember how much Jean had learned
15 then. Later we knew this, but I don't remember if we
16 knew it then.

17 Q I would also like to note that in that
18 middle paragraph, U.S. Attorney states "there is
19 insufficient information in the referral to sustain
20 many of the allegations made by the investigators or
21 to warrant the initiation of criminal
22 investigation."

1 Do you agree with that sentiment?

2 A Well, no. We track indictments out of
3 those referrals, okay. And out of those 10
4 referrals, at last count I think we had nine or 11
5 indictments on those referrals.

6 MR. KRAVITZ: Excuse me, I have to object.
7 I don't mean to interrupt, but I think this letter
8 refers only to the first referral.

9 BY MR. BARTOLOMUCCI:

10 Q I believe he's correct in that. I think
11 this is only with reference to C0004.

12 A Okay. Then I would also not agree with it,
13 because we've gotten indictments out of that
14 referral, I think three indictments.

15 MR. KRAVITZ: I'm sorry to interrupt you.

16 THE WITNESS: That's all right, that's all
17 right. Back to this, one of the repeated allegations
18 that was first said here was that the referrals were
19 no good, the referrals were no good, but when you get
20 indictments, when you get plea bargains and
21 confessions, I think that stands the test.

22 BY MR. BARTOLOMUCCI:

1 Q Well, now let's turn our attention to
2 those, the second set of referrals. There were nine
3 referrals prepared and submitted in 1993, and I think
4 what you were just alluding to, some of these
5 referrals provided the basis for criminal indictments
6 against James and Susan McDougal and Jim Guy Tucker,
7 an indictment prepared by independent counsel Ken
8 Starr; is that right?

9 A Yes.

10 Q So, in other words, law enforcement
11 personnel did, in fact, conclude that those referrals
12 outlined criminal activity and lead to the additional
13 investigation, in fact the initiation of legal
14 action?

15 A Yes. No one in either Mr. Fiske's office
16 or Mr. Starr's office ever said the referrals were
17 not good.

18 Q What happened to those referrals after you
19 submitted them?

20 A The nine?

21 Q The nine, in between the time that they
22 wound up in Ken Starr's indictment of the McDougals

1 and Jim Guy Tucker?

2 A It was either in late October or early
3 November of '93, I want to say Jim McKay, but he's
4 the sports guy, I think it's Don Mackay. Don Mackay
5 was appointed as I think a special counsel, and then
6 we worked with him for probably 60 to 90 days,
7 somewhere in there, and then Mr. Fiske was appointed
8 and we worked with Mr. Fiske until he was replaced by
9 Mr. Starr, and now we work with Mr. Starr.

10 MR. KRAVITZ: Can I just make a comment off
11 the record.

12 (Discussion off the record.)

13 BY MR. BARTOLOMUCCI:

14 Q Now, I understand that your referrals ended
15 up in the hands of special prosecutors and
16 independent counsel, but you submitted them to the
17 U.S. Attorney?

18 A Yes.

19 Q To Paula Casey. And do you know what she
20 did with them?

21 A No, I don't know internally what she did
22 with them. I think that somewhere, and I can't

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1 remember the time period here, but somewhere in here
2 she recused herself from rendering a decision on
3 those referrals, but I am not sure on the timing of
4 that.

5 Q Prior to your submission of the second set
6 of referrals, did there come a time when they were
7 subjected to a legal review by persons in the Kansas
8 City office?

9 A Yes.

10 Q Can you explain what happened?

11 A The -- we had always given a copy of our
12 referrals to the PLS criminal coordinator, that was
13 just standard procedure so that they would know what
14 was going on criminally in an institution where they
15 might have some interest if they had open and ongoing
16 civil claims, so we had always, ever since I had been
17 there, had given them complete set of referrals and
18 the attachments so that they would know what we were
19 doing.

20 Q Let me break in. In other words, you would
21 give your referrals to PLS criminal coordinator for
22 potential assistance of civil investigations?

1 A Or just for an FYI so that they wouldn't
2 be -- that they would know what was going on with the
3 Department of Justice, they were pursuing a common
4 target. So we had always done that. And we had been
5 pretty timely about that, too, you know, within two
6 or three days, so there wasn't long periods of time
7 when they didn't have this information.

8 The request for a -- and I prefer to use
9 the word critique rather than review, because I think
10 they impart different meaning. The request to do a
11 critique of the referrals, that was the first time
12 this had happened and it was with regard to the nine
13 Madison criminal referrals.

14 Q Let's flesh that out. Prior to the Madison
15 referrals, you would submit a referral to PLS for
16 their information, for their benefit, but there was a
17 change of policy at about the time of the Madison
18 referrals?

19 A I don't think there was a change of policy,
20 no. The policy was interpreted differently by PLS
21 attorney in Kansas City.

22 Q So -- but someone ordered or mandated that

1 PLS conduct a "legal review" of these second Madison
2 referrals prior to their submission?

3 A Yes.

4 Q And that was justified on the basis of an
5 interpretation of a policy outlined in a memo dated
6 June 17, '93?

7 A The memo was dated June 17 of '93, but
8 that's not what the document said because I talked
9 with the two people who wrote the document.

10 Q What is your understanding of the content
11 and meaning of the June 17, '93 policy memo?

12 A PLS is to be provided with a copy of any
13 outgoing criminal referrals for their review as a
14 means to exchange information, but you are not
15 dependent upon them critiquing your referrals and
16 telling you it's all right to send them.

17 Q So it's not your understanding that say PLS
18 had some sort of veto power over the referrals?

19 A No, they did not.

20 Q And it was not your intention to submit a
21 copy of these referrals to PLS prior to their
22 submission until someone ordered you otherwise?

1 A Yes.

2 Q And who actually told you, give these
3 referrals to PLS to review before you send them to
4 the U.S. Attorney?

5 A Julie Yanda.

6 Q For the record, would you state what her
7 title, position is?

8 A I think her title then was, I don't know,
9 senior counsel PLS.

10 Q I take it you complied, you did give them
11 the referrals for review?

12 A Yes, I did.

13 Q And I have a copy of the legal review
14 here. If you need to refresh your memory, I will
15 have you look at it, but what I want to ask you is,
16 what did you think about the work product of this
17 review?

18 A Well, a criminal referral is a factual
19 document, it is not a legal document, okay. Those
20 are questions that the United States Attorney will
21 have to decide as they evaluate the referral, but
22 they are not questions that I decide before I submit

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1 a factual document.

2 Q Am I fairly characterizing this document,
3 the legal review which for the record is numbered
4 PLS 0001-S, am I fairly characterizing it when I say
5 it goes referral by referral and raises a number of
6 questions, basically one sentence per question or so,
7 about the referrals?

8 A Yes.

9 Q And in your opinion --

10 A I don't -- I refer to it as a critique
11 rather than a review, okay.

12 Q We'll call it a critique from here on out.

13 A Okay. And I went to some great lengths to
14 try to get that message when I was at -- we were at
15 the House with representative from Minnesota,
16 Benvenuto, and we never quite got that clarified, so
17 I will start again.

18 Q I only call it a legal review because
19 that's the term given to it, but these questions in
20 your opinion go to legal rather than factual issues?

21 A Uh-huh.

22 MR. BOCK: Again, when you --

1 THE WITNESS: Yes, yes.

2 BY MR. BARTOLOMUCCI:

3 Q So in other words, these are not questions
4 that a criminal factual investigator would be
5 thinking about, would care about, in the course of
6 preparing a referral?

7 A No. The standard that we have to go by is
8 a joint document that's been approved by almost every
9 federal agency, and I think there's very good reason
10 why they want the document to be factual and not
11 legal, simply because nonattorneys prepare the
12 document and they deal with facts, they don't deal
13 with the law. And if you wanted every document to
14 meet every legal test that you could think of, you
15 would not get many criminal referrals. That's not
16 what the program is trying to generate. That's not
17 the goal of the program.

18 Q A referral is not trying to present
19 evidence sufficient to obtain a conviction by a jury?

20 A No.

21 Q And not even meant to be all the
22 allegations you would need to compose a criminal

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1 indictment?

2 A No.

3 Q If I'm correct, it's meant to provide
4 enough evidence to warrant further investigation by
5 law enforcement personnel?

6 A Yes, and that's about all that we can do,
7 because we do not have powers of arrest, we do not
8 have subpoena authority, we cannot compel someone to
9 talk to us. So, you know, we're limited in the
10 authority that we have to put these together.

11 Q So in your opinion, was this critique a
12 useful exercise?

13 A Not for us, it wasn't.

14 Q Did this delay the submission of Madison
15 referrals?

16 A By approximately two weeks.

17 Q I've heard it said that this critique
18 was -- in that it was ordered that it be before the
19 submission was unprecedented. Is that your opinion?

20 A Yes.

21 Q It had never happened that way before?

22 A Never happened that way before.

1 Q Did it happen that way after the Madison
2 referrals?

3 A Oh, it sort of ran hot and cold. A period
4 of time went by and things were pretty much the way
5 they had been prior to the Madison referrals.
6 Recently, oh, I'd say spring of this year before the
7 House hearings, we got rather vigorous again about
8 reviewing referrals before they went out, but I don't
9 know if you have that document or not, but there was
10 a draft policy that came out in November of '93
11 talking about procedures for criminal referrals, was
12 not signed so it was draft, came out in November and
13 it was backdated on September. It would have been
14 backdated prior to the submission of the Madison
15 referrals, but it was never signed. And it basically
16 said that PLS has the opportunity to review the
17 referrals, but it is not to hold up the transmission
18 of the referrals, but that procedure was just a draft
19 and never occurred.

20 Q I see.

21 A But it reinforced what we had thought all
22 along.

1 Q Did it seem to you that this policy of
2 presubmission critique was created with Madison in
3 mind?

4 A I didn't know. I didn't know what the
5 motivation or the justification was. It bothered me
6 about Madison because all of the civil claims in
7 Madison were closed, okay, so there was no
8 communication advantage that was going to be gained
9 here because their work on Madison was over. I never
10 understood nor was I told what this was supposed to
11 accomplish.

12 Q Could it have been for the benefit of law
13 enforcement investigators?

14 A No.

15 Q You don't think it would have been useful
16 to a law enforcement investigators after the
17 submission?

18 A The critique?

19 Q Yes.

20 A I don't think so.

21 MR. BOCOCC: Are you talking about the
22 critique presented to PLS?

1 THE WITNESS: This thing here
2 (indicating).

3 BY MR. BARTOLOMUCCI:

4 Q The critique that PLS prepared?

5 A It never went -- to the best of my
6 knowledge, it didn't go to law enforcement.

7 Q It was simply prepared?

8 A Yes.

9 Q Do you know who the intended audience of
10 the critique was?

11 A Who got that? I don't remember off the top
12 of my head. Just internally within PLS in Kansas it
13 looks like, unless there's a cc somewhere. It
14 doesn't say. This document becomes very important
15 later. That's all I want to say now because we're
16 out of context, but that document becomes very
17 important later.

18 MR. KRAVITZ: Can you say for the record
19 which document you're referring to?

20 MR. BOCOCK: PLS 0001-S.

21 MR. KRAVITZ: The critique of the Madison
22 referrals?

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1 MR. BARTOLOMUCCI: Also known as the legal
2 review.

3 MR. KRAVITZ: That's how it's been
4 identified to us, too. He's not the only one.

5 BY MR. BARTOLOMUCCI:

6 Q Did there come a time when there was some
7 friction between Kansas City investors and Kansas
8 City legal personnel with reference to the production
9 of documents in compliance with an FBI subpoena?

10 A We need to talk about the period of time
11 between when the first 0004 was submitted, which I
12 think is late August or early September of '92, and
13 when -- no, I'm off a year. We need to talk about
14 the Don Mackay period of time, which is --

15 Q Mackay was the first special prosecutor?

16 A Right, special counsel.

17 Q Special counsel.

18 A Which as we're going to be talking the
19 fall, let's say, September, October, November,
20 December of '93, because the other nine referrals
21 were in process. And the reason that he made the
22 trip to Kansas City with some FBI people from Little

1 Rock was to complain about the subpoena compliance
2 that he was getting with regard to the nine
3 referrals.

4 Q Mackay complained?

5 A Yes.

6 Q What was his complaint?

7 A Well, the procedure had been altered and
8 PLS was making the final determination whether or not
9 documents would be transmitted to the FBI in Little
10 Rock as a result of a subpoena. They became very,
11 very frustrated, made a complaint up the chain to
12 Justice in Washington, over to RTC, down to
13 investigations, hence he had -- got some people
14 together and came to Kansas City, I think it was
15 early November of '93, and we sat down and had a
16 session about subpoena compliance.

17 Q What was the cause of the problem with
18 subpoena compliance?

19 A PLS wouldn't honor the subpoenas. They
20 would say they were flawed or something was wrong or
21 something else, they wouldn't give all the documents
22 requested. It was just a slowdown.

1 Q But somehow the allegation was made that
2 investigations was also involved in this
3 noncompliance?

4 A No, they were concerned because in the past
5 this had not been a procedure. Subpoena compliance
6 was our responsibility, but when Madison got
7 involved, then you had another layer, a different
8 procedure that was not working for them.

9 Q Did any of your people interfere or cause
10 delay in subpoena compliance?

11 A No, none of the investigators, no. During
12 the course of the meeting, the PLS representatives
13 who were present were Julie Yanda and Phil Adams.
14 The FBI agent was very upset. I guess he was in
15 charge of the case and couldn't get the documents
16 that he wanted and I think he thought it was
17 obstruction.

18 Q And did this issue result in the removal of
19 Jean Lewis as the lead Madison investigator?

20 A No, that removal and this incident are
21 unrelated. Jean Lewis was removed as lead
22 investigator of Madison because Julie Yanda asked for

1 her to be removed.

2 Q Why did she make that request?

3 A There was some friction between Jean and
4 Julie's criminal coordinator, Karen Carmichael, and
5 Julie came to me and asked me to remove Jean. And I
6 said well, if I'm going to remove Jean, you should
7 remove Karen, let's clean the House on both sides,
8 put new people in and get on down the road. It was a
9 management decision, that's what we did and it seemed
10 to work fine after that.

11 Q Do you know what the source or nature of
12 that friction was between them?

13 A Oh, it goes back to Tulsa, it goes back to
14 other institutions. There was a lot of history
15 there.

16 Q Was it over, nominally at least, the
17 sharing of information between the two of them?

18 A I wouldn't say sharing of information. I
19 would say it was over a disagreement with regard to
20 the roles of each in the criminal referral process.

21 Q So Ms. Lewis's removal was not because of
22 the work she had done on Madison in any way?

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1 A No.

2 Q Because of her job performance?

3 A No. She was a very competent
4 investigator. She had done a very good job there.

5 Q Her removal wasn't even punitive at all?

6 A No.

7 Q It was just to eliminate this tension?

8 A Yes. I think she was upset because she had
9 spent so much time on Madison and, you know, wanted
10 to stay involved, but she, after that, was not
11 involved on the day-to-day operation of the
12 investigation. She still was a very critical
13 resource person because she was the most
14 knowledgeable investigator about Madison, so people
15 would still talk to her like an encyclopedia, but she
16 was not the investigator in charge of the
17 investigation.

18 Q In light of all these events that you've
19 mentioned to me, the delays in the handling of the
20 first referral, in receiving a response to it and an
21 ultimate declination, the issues surrounding the
22 critique, the subpoena compliance issues, did you

1 draw any larger conclusions about how the Madison
2 referrals were being treated by the system?

3 MR. KRAVITZ: Can you be more specific than
4 just "the system"?

5 BY MR. BARTOLOMUCCI:

6 Q By those persons who had responsibility for
7 moving it along, making decisions upon it.

8 MR. KRAVITZ: You mean within the
9 Department of Justice? The RTC?

10 BY MR. BARTOLOMUCCI:

11 Q Within RTC and the Department of Justice.

12 A I really can't comment much on the
13 Department of Justice, other than at the first one,
14 it took a year. The other nine seemed to --
15 hindsight is 20/20. They seemed to move along just
16 fine theoretically after things got to rolling.

17 Q You mean after the U.S. Attorney recused
18 herself?

19 A Yes. Within the RTC, it was totally
20 different from day one.

21 Q What was totally different?

22 A Well, the procedure, the -- that document

1 (indicating), couldn't send out -- didn't want us to
2 send out the referrals until they had a chance to
3 review it, subpoena compliance. The whole thing was
4 different.

5 Q I'm going to read to you something else you
6 said on August 8 of last year before the House
7 Banking Committee. I don't think I have the
8 transcript with me, but I'll represent to you that
9 this is accurate. What you said was "through this
10 arduous process, we have learned that the RTC is not
11 above politics in its handling of investigations of
12 high visibility failed banks. If important people
13 are implicated, special procedures are employed. New
14 review mechanisms can be developed and sensitive
15 information leaked to the highest sources. Analyses
16 of criminal referrals can be tainted by those with a
17 political agenda. Information flow can be slowed by
18 newly invented rules and review procedures until the
19 prosecution process appears obstructed by invisible
20 forces."

21 Is that the substance of what you said?

22 A I think that's out of my statement, opening

1 statement, yes.

2 Q Is that still your view?

3 A Yes, it is.

4 Q Can you elaborate upon it for us?

5 MR. BOCK: Could you be more specific
6 about a particular part of it?

7 MR. BARTOLOMUCCI: I'll rephrase the
8 question.

9 BY MR. BARTOLOMUCCI:

10 Q Did you come to the conclusion and is it
11 your view that attempts were made to obstruct or
12 impede the Madison referrals within the RTC?

13 A Yes.

14 Q And if you would state once again the bases
15 for your conclusion?

16 A Well, based on the questions that we have
17 gone over here in the last 15 or 20 minutes, I think
18 when we talk about the critique, we talk about the
19 change in compliance procedures, we talk about
20 replacing Jean Lewis, if I would have replaced her
21 and not allowed her to be a source of information,
22 the investigative effort would have been seriously

1 hurt, okay. I did replace her, but I didn't isolate
2 her. She was still available as a source of
3 information.

4 All of those things were not normal, were
5 not ordinary, and they could have done much to slow
6 up or hinder or obstruct the investigation. To a
7 degree, they all did, okay.

8 Q In your statement that I've quoted, you
9 identify politics as a cause of this interference.
10 Can you elaborate for us what you mean by that?

11 A Oh, we have -- so far in the questions that
12 you have given to me, we haven't covered all these
13 other areas that led me to make that statement, but
14 we have -- during 1994, the mandate that we were not
15 to talk to independent counsel unless PLS gave us
16 permission to do so, the being placed on
17 administrative leave. If I had -- if we were going
18 at this in a chronological order there would be a lot
19 more things, but things like that, okay.

20 Q A series of incidents?

21 A Yes. It's not any one incident, but a
22 multitude of many, okay.

1 Q And the combined force of them left you
2 with an unmistakable impression that attempts were
3 being made to stand in the way of the referrals?

4 A Yes, or stand in the way of the referrals
5 or use you as an example of not following what should
6 be done. That's sort of vague, but things of that
7 nature.

8 MR. KRAVITZ: Chris, can we take a break
9 sometime soon?

10 MR. BARTOLOMUCCI: Would you like to take a
11 break?

12 THE WITNESS: Why don't we go until 3:00
13 and take a break.

14 MR. BOCOCC: My general view is unless
15 we're in the middle of something, take a break.

16 MR. KRAVITZ: I don't know if you are in
17 the middle of something.

18 MR. BARTOLOMUCCI: I can take a break
19 here.

20 (Recess.)

21 (The reporter read the record as requested.)

22 MR. BOCOCC: You had asked Mr. Iorio sort

1 of an open-ended question which was, in essence, what
2 was the basis of the conclusion that you reached in
3 your opening statement, and that's kind of a
4 difficult question for Mr. Iorio to answer, but I
5 think he had some things he wanted to add by way of
6 clarification.

7 MR. BARTOLOMUCCI: By all means.

8 MR. BOCOCC: Because we want to make sure
9 his answer to that gives you a complete picture of
10 what's involved. And I may even help a little bit to
11 make sure we get all the issues out there.

12 THE WITNESS: We had talked about the
13 critique, "review procedure" which was unusual, the
14 change in subpoena compliance and then we talked
15 about the November '93 draft procedure that was
16 backdated to September, and I don't know if you've
17 got a copy of that document or not. That document is
18 available.

19 Basically that procedure tried to, if it
20 had been implemented, tried to say that what PLS did
21 by holding up the referrals until conducting this
22 review, critique procedure, was all right. It seemed

1 like it was an effort to make something that had
 2 occurred questionable and out of the ordinary to
 3 appear to be more ordinary, okay. That procedure was
 4 not signed. It was just sent out as a draft. That
 5 document is available. The House has it. If you
 6 can't find it with all that other stuff, if you let
 7 me know, I can get it for you, okay?

8 BY MR. BARTOLOMUCCI:

9 Q Well, it's probably in the reams and reams
 10 of paper, but just so I understand you, you're
 11 telling me that in November of '93, that is after the
 12 date of the critique, the critique is dated October 7
 13 '93, you're saying the next month, in November,
 14 there was a memo which attempted to justify or
 15 formalize that policy and then it was backdated to
 16 September?

17 A Yes. It would have been a procedure that
 18 would have changed the June 17, '93 procedure to a
 19 procedure more in line with what PLS in Kansas did
 20 with those nine referrals.

21 Q So the June 17, '93 policy memo comes
 22 along, and it's subjective as to interpretations as

1 to what it required or allowed PLS to do; is that
 2 right?

3 A Only in the mind of PLS.

4 Q In the mind of PLS. In your view, as we've
 5 stated, it didn't require presubmission, critique or
 6 review?

7 A Nor did the two authors of the document,
 8 that was not their intent, either.

9 Q Who were they, the authors?

10 A Jim Dudine and Carl Gamble.

11 Q And they told you this?

12 A Yes. Well, we had a telephone conference
 13 because I was faced with this difficulty of getting
 14 these referrals along the road and out, so Lee Ausen
 15 and I had a conference call with Jim Dudine and Carl
 16 Gamble and said what did you mean.

17 Q You asked them about it when the issue came
 18 up about presubmission critique, you asked them since
 19 they wrote the policy what they meant by it?

20 A Yes. And they said no, that's not what we
 21 meant. We meant an information copy.

22 Q Then the November '93 draft policy

- 1 attempted to formalize PLS's view?
- 2 A Yes.
- 3 Q Then that got backdated to September?
- 4 A Yes.
- 5 Q In an apparent attempt to --
- 6 A But it was never signed.
- 7 Q Which was never signed?
- 8 A The November policy.
- 9 Q So it was drafted in November, but the
- 10 document -- there's a document, but it's dated
- 11 September?
- 12 A It was drafted in November, backdated to
- 13 September, but because it wasn't signed, it doesn't
- 14 have any force and effect so the previous policy of
- 15 June 17, '93 is still the one that's in force and
- 16 effect, okay?
- 17 Q Okay.
- 18 MR. BOCK: Mr. Iorio has several other
- 19 points to make.
- 20 BY MR. BARTOLOMUCCI:
- 21 Q Certainly.
- 22 A There is a -- and I've got to find it in

- 1 here.
- 2 Q Just for the record, you're looking through
- 3 the October 7, '93 critique/legal review?
- 4 A Yes?
- 5 A On page 7, Arabic 6, it said "could the
- 6 four \$3000 checks be relevant to a fundraiser event
- 7 for couples, i.e., bank with gala, et cetera, for
- 8 which tickets cost \$1500 a person (in 1985 the legal
- 9 limit was not 1000, but was \$1500)."
- 10 This particular information there was not
- 11 information that investigations in Kansas City had
- 12 access to.
- 13 Q Just to provide a little bit of background,
- 14 you're reading from the critique. A question raised
- 15 by PLS about a specific criminal referral?
- 16 A Yes.
- 17 Q And you're telling me that the question
- 18 raised is based upon -- or draws from information
- 19 which wasn't public at the time?
- 20 A Yes.
- 21 Q How do you know that the information wasn't
- 22 public?

1 A Because this same explanation for the
2 checks was in a White House press release some three
3 weeks later.

4 Q And you're sure of this?

5 A Yes. We have given this information to the
6 interviews of the House. Yes, we're very sure on
7 this. I think we can even tell you which newspaper
8 we saw it in.

9 Q Okay.

10 MR. BOCOCCO: And there's also no report of
11 the campaign contributions by the Clinton campaign
12 fund, and it was a fundraiser after the campaign was
13 over.

14 BY MR. BARTOLOMUCCI:

15 Q Let's proceed under the assumption that
16 you're correct, that this was not publicly available
17 information at the time. How would PLS have come by
18 it?

19 MR. KRAVITZ: You're asking him to
20 speculate?

21 MR. BARTOLOMUCCI: I'm asking if he has any
22 knowledge about how PLS would have come by it.

1 MR. KRAVITZ: That's a fair question.

2 THE WITNESS: Well, I have -- only what
3 I --

4 BY MR. BARTOLOMUCCI:

5 Q If you have speculation, you can label it
6 as such.

7 A Only what I -- I have been told that --
8 well, I shouldn't say I've been told. I've read this
9 in the newspaper, I read it in someone's deposition,
10 I can't remember because I've read so much, okay, but
11 I didn't create this information. Jean Hanson was
12 provided a copy of this (indicating) in draft form.

13 MR. BOCOCCO: By "this," you mean the
14 critique?

15 THE WITNESS: The critique.

16 BY MR. BARTOLOMUCCI:

17 Q Jean Hanson, the general counsel of
18 Treasury?

19 A The Treasury, was provided a copy of the
20 critique in draft form.

21 Q Do you know -- well, that must have been in
22 between the preparation of the referrals and --

1 A It has to be between -- I think we
2 transmitted in October 8 and I think PLS was given a
3 copy of the referrals on the 28th or 29th or 30th of
4 September.

5 Q So it was about --

6 A 10 days.

7 Q -- a 10-day window there?

8 A Yes, but there's no one -- we didn't have
9 access to that information. PLS didn't have access
10 to that information, you know.

11 Q So it's your understanding from public
12 reports, or et cetera, that Hanson was provided a
13 draft copy of it?

14 A Yes.

15 Q So is it your speculation, perhaps, that
16 this information came back to PLS through Hanson?

17 A Yes, that's our speculation, because the
18 wording here is almost -- I can't remember now, but
19 it didn't -- when we read this, it didn't flash
20 anything because it didn't mean anything. You know,
21 well, jeez, they're really out in left field on this,
22 but then three weeks later or two weeks later, there

1 it is in a White House press release, you know, it
2 might have been coincidental.

3 Q Who noticed that that White House press
4 release contained this information which had
5 previously appeared in the critique?

6 A I can't remember if it was Jean Lewis or Ed
7 Noyes or Mike Karen or myself; I just can't remember.

8 Q Somebody in KC investigations figured this
9 out?

10 A Yes.

11 Q Brought it to your attention?

12 A Yes.

13 Q I imagine you made some inquiries in
14 PLS about this?

15 A No.

16 Q Didn't talk to anybody about it?

17 A We told the independent counsel.

18 Q Did anyone in PLS say something to you
19 about it?

20 A No.

21 Q So you don't know how it got in there?

22 A No, I have no idea.

1 Q But it appears as though it was information
2 pertaining to some political fundraiser for Bill
3 Clinton; is that right?

4 A Right there (indicating). With that, you
5 can't tell. You'd have to get out the referral and
6 go to the referral section that they are critiquing
7 to see exactly -- that won't give you the complete
8 picture. You've got to go back because we're
9 questioning some \$3000 checks that were going through
10 the account.

11 Q Setting aside the fact that the question of
12 whether this could have come from the White House or
13 Jean Hanson, they're raising a factual question here,
14 a possible factual explanation for these checks?

15 A Yes, trying to explain what the checks
16 might have been.

17 Q But PLS is not an investigative body or at
18 least -- let me retract that.

19 They didn't do any further investigating of
20 the matters in the criminal referrals, did they?

21 A No.

22 Q By and large, this critique relates to

1 legal questions or what-ifs from the face of the
2 referrals?

3 A Yes.

4 Q This question offers possible explanation
5 based upon facts which were not part of the criminal
6 referrals?

7 A Yes.

8 Q So even setting aside the issue of did this
9 come from Jean Hanson, from the White House, there is
10 a question, is there not, about how they would have
11 known this at all?

12 A Yes.

13 Q Or why this would have been something --
14 within the scope of their mission?

15 A Yeah, when we initially read that, it
16 just -- it didn't do anything because it doesn't fit,
17 it doesn't add, but it was unique enough that when it
18 was seen later in the newspaper, it flashed for a lot
19 of people.

20 Q So you really believe this is highly
21 unusual and extraordinary?

22 A Very unusual.

1 Q Do you have anything else you want to add
2 about it?

3 A One of the things that I had mentioned
4 earlier is that the -- that Madison the institution
5 was a closed institution. All of the civil claims
6 had been closed by April Breslaw back in 1989 or
7 1990. There was no ongoing litigation, no ongoing
8 anything that would involve PLS. So for them to be
9 tremendously concerned about the referrals that were
10 going out on Madison doesn't really fit because they
11 have no interest in a closed institution. You know,
12 it just doesn't add up, it doesn't make any sense.

13 Q There's something I don't understand.
14 You're telling me that PLS Kansas City's work on
15 Madison was done. In fact, they never -- since it
16 was an FDIC-assigned institution, the institution had
17 been closed by the FDIC, it had never been
18 assigned --

19 A That institution had been handled by PLS in
20 Washington, D.C. The Madison civil work had never
21 been assigned to the Kansas City PLS office. They
22 had no files, they had no interest, they had no

1 nothing but yet they wanted to do a critique of those
2 referrals. And I don't know why.

3 Q So it sounds to me like you're telling me
4 that it's a mystery why they were interested?

5 A Yeah. They never asked to do that on any
6 other institution that was closed that we did
7 referrals on.

8 The acronym "PLS" stands for professional
9 liability claim, and PLS would bring lawsuits against
10 officers, directors, attorney, accountants and
11 appraisers for negligible work that would cause loss
12 to the institution, so they are primary negligence
13 litigators, okay. And that's their background,
14 that's their experience. It is not civil fraud, it
15 is not criminal.

16 Q Now, there was some continuing civil work
17 being done on Madison out of Washington, D.C.; is
18 that right?

19 A They -- a civil review team was put
20 together in June of '94.

21 Q Out of D.C.?

22 A Out of Washington, D.C., yes.

1 Q What were they trying to do? What does a
2 civil review team do?

3 A They were -- well, it started out as a
4 civil review team and then Pillsbury, Madison & Sutro
5 enters into the picture as the retained law firm to
6 assist in the civil review.

7 Q Just explain for me what a civil review
8 is.

9 A You would go back and look at the work that
10 was done by the first attorney who had the
11 institution, that was April Breslaw. You would go
12 back and look at her work, look at the documents that
13 she looked at and really second-guess whether or not
14 she made valid decisions. We had done the same thing
15 in the fall of '93 after all the referrals were done
16 because we wanted to know if there was something in
17 Madison that we needed to know about, so I assigned
18 an investigator to do that very same thing. Took him
19 an extended period of time because we couldn't get
20 the records, but he reached the conclusion that the
21 decisions that April Breslaw had made were correct.

22 Q So at the time that this civil review was

1 being conducted in D.C., the opportunity for civil
2 cases to be brought was over, those cases were
3 closed?

4 A The statute extender was passed by Congress
5 in February of '94. It allowed -- it extended the
6 statute of limitations on civil fraud, and I think on
7 certain negligent matters through December 31 of '95,
8 but the only thing with Madison that was still --
9 now, bear in mind this is February of 1994, six or
10 seven months after the referrals went out in October
11 of '93. The only viable potential claims in Madison
12 were civil fraud. The problem with Madison is there
13 was always plenty of merit, okay. There was always
14 negligent acts within the institution, but there was
15 never any money to recover so it doesn't do you any
16 good to bring a civil suit if you can't recover.

17 That's the conclusion that April Breslaw
18 reached, that's the conclusion that we reached. I
19 can't tell what this conclusion that Pillsbury,
20 Madison, Sutro reached because we've never seen their
21 complete report, so I don't know where they are.

22 Q Well, just so I understand, the civil

1 review was intended both to go over, to review the
2 civil work which had already been done in Madison?

3 A Yes.

4 Q Under the leadership of April Breslaw?

5 A Yes.

6 Q And determine whether there was any
7 possible additional civil case which could be brought
8 in terms of civil fraud?

9 A Yes, yes. That's what it started out as,
10 although that's not what it ended up as.

11 MR. BOCOCC: You're talking about the civil
12 review by Pillsbury, Madison now, aren't you?

13 THE WITNESS: Yes, yes. Pillsbury,
14 Madison & Sutro, I'll just say Pillsbury, was hired
15 by Ellen Kulka, I think in the third week of January
16 of 1994.

17 BY MR. BARTOLOMUCCI:

18 Q Tell us who Ellen Kulka is.

19 A She was then the general counsel of the
20 RTC. They commenced their civil review of Madison,
21 but it was more than a civil review, okay. They
22 looked at every single document that pertained to the

1 referrals. They looked at everything.

2 During the course of their efforts, and I
3 think they just theoretically recently have
4 completed, like this summer, maybe July of this year,
5 they completed and submitted maybe a 50- or 60-page
6 document and that particular document dealt with
7 whether or not Whitewater caused a loss to Madison.
8 Well, that's not a civil issue, that's not a civil
9 fraud issue, that's a criminal issue. So what they
10 have done, and the American taxpayer has paid for it,
11 is they have critiqued the referral.

12 Q Were they asked to do that by the RTC?

13 A I don't know what they were asked to do.
14 General counsel would have to answer that question
15 for you.

16 Q I take it that it's ordinary for a private
17 firm to be retained to conduct a true civil review?

18 A I don't know that it ever happened before.

19 Q So you're saying ordinarily this is
20 performed by, as in this case, people in D.C.?

21 A Yes. The actual function of a civil
22 review, that would mean that you would come back and

1 look over someone's shoulder to make sure they made
2 good decisions. I don't know that I've ever seen
3 that happen in the RTC, okay. This is maybe the
4 first and only.

5 Q That is it, being given to a private firm?

6 A Yes.

7 MR. BOCK: What Mr. Iorio is trying to
8 explain to you are some additional reasons that
9 support his conclusion that was reached in his
10 opening statement that this was handled in a highly
11 unusual manner. You may or may not know that the
12 Pillsbury, Madison report cost something like
13 \$4 million, that they had at some point something
14 like 25 lawyers working on it at one time, that the
15 report which Mr. Iorio can explain to you
16 substantially interfered with the operations of the
17 investigation department for a period of many months
18 because, of course, these people had to come in to
19 get this information, which they have the reason that
20 they claim to do it, and that would be
21 understandable. That's never been done before and
22 this is a man who is criticized because he spent too

1 much time, too many people working on the Whitewater
2 case. Are you with me here?

3 THE WITNESS: And I didn't spend
4 \$4 million.

5 BY MR. BARTOLOMUCCI:

6 Q So it's your view that this civil review
7 conducted by Pillsbury, Madison & Sutro was just --
8 was another thing that contributed to your belief
9 that --

10 A And the timing is very, very critical
11 here. Bear in mind that Mr. Fiske came on as special
12 counsel in January of '94, and Pillsbury, Madison
13 were hired in January of '94. They staffed up
14 quicker than the independent counsel did. If you
15 will look at their report, the only one that they
16 have submitted, and I say that there's other
17 documentation there that has not been made public.
18 They talk about the Whitewater and Madison
19 relationship and they list the number of people they
20 have interviewed as a basis for preparing this
21 document. Well, they interviewed a number of people
22 that didn't have a darned thing to do with

1 Whitewater. These were extraneous interviews that
2 had to do with additional referrals. Most of the
3 names on the interview list you will recognize
4 because most of those people have been indicted.

5 I also think that they probably got to
6 interview the people before Mr. Fiske or Mr. Starr
7 got to interview them. I think there's many
8 questions that need to be asked and answered by
9 Pillsbury with regard to what were they doing, why
10 were they doing it and who was telling them to do it,
11 plus spending \$4 million to do it.

12 Q And you said that it was Ellen Kulka who
13 made the decision to hire Pillsbury, Madison to do
14 this?

15 A Yes.

16 Q And presumably she set the parameters of
17 their investigation?

18 MR. KRAVITZ: Are you asking him to
19 speculate?

20 THE WITNESS: No, I -- to the best of my
21 information, she made that decision.

22 MR. KRAVITZ: Which decision?

1 THE WITNESS: To hire that law firm.

2 MR. KRAVITZ: I think that was a different
3 question than what was just asked.

4 THE WITNESS: Okay, but, you know, that
5 all -- all of this -- you know, this procedure that
6 prompted me to say what I said in my opening
7 statement to the House, you know, it starts in the
8 fall of '92 and it goes on for -- well, it goes on
9 through July of '95. It's almost a three-year period
10 of time here that things are happening that are not
11 normal, that are not explained, are out of the
12 ordinary, the little statement in here (indicating),
13 and then you've got the administrative leave where
14 I'm placed on administrative leave, I'm brought back,
15 I'm never told why I'm placed on administrative
16 leave.

17 BY MR. BARTOLOMUCCI:

18 Q We'll come to the administrative leave
19 issue, but I'm still curious about the Pillsbury,
20 Madison work. I've read the report, and it seemed to
21 me that it spent a lot of time talking about the
22 criminal referrals.

1 A Uh-huh.

2 MR. BOCK: Meaning yes, if you meant to
3 say yes.

4 THE WITNESS: Yes.

5 BY MR. BARTOLOMUCCI:

6 Q What do you think of that?

7 A If they were hired to do a civil review, I
8 would like to see a document that tells me what civil
9 items they looked at. If they were hired to do a
10 criminal review, then that's something else.

11 Q In other words, if they were looking into
12 what civil claims should have been brought, could
13 have been brought, that wouldn't normally lead them
14 to focus upon criminal matters?

15 A That's true.

16 Q They really wouldn't have a reason to be
17 looking into these criminal referrals that your
18 office prepared?

19 A Not for a civil review, no.

20 Q Is there any reason to believe that the
21 suspected crimes in the criminal referrals would be
22 the same events which might trigger civil liability?

1 A They might have some commonality, but check
2 kiting is not one.

3 Q But if you were going to be -- if you were
4 investigating possible civil liability, you might not
5 start or dwell long at all upon the matters in the
6 criminal referrals?

7 A No. You would look at the officers and the
8 directors of the institution. You would look at the
9 attorneys, accountants, appraisers, look at lending
10 policy, look at classified loans, you would look at
11 very -- standard procedure of what you do. The other
12 thing that bother us about Pillsbury, Madison was
13 they weren't bankers. They didn't know what a --
14 they didn't know banking terms. It was later we
15 found out that a secondary contractor was hired to do
16 the bank work for them because they didn't have
17 attorneys who did bank work.

18 Q Let me ask you one more question about
19 Pillsbury. I believe your counsel said that their
20 work on the civil review that they conducted
21 interfered with your work, with the operations of
22 Kansas City investigations?

1 A Well, I think what they were trying to do
2 is they were trying to shut us down and start them
3 up, okay, and it was the same period of time that we
4 were told well, if the independent counsel calls you
5 and wants a question answered, you can't answer until
6 PLS tells you it's all right, okay. So we had a
7 situation where we got a call from one of Mr. Fiske's
8 attorneys, Julie O'Sullivan, and we said well, we
9 can't answer until we get permission. So two or
10 three weeks go by and we don't get permission, and I
11 think Ms. O'Sullivan became infuriated and she
12 drafted a letter that went to PLS in Washington, D.C.
13 which she very calmly told them that she could talk
14 to us any time that she wanted to and she expected us
15 to be able to answer.

16 Now, she sent us a copy of her letter so
17 that we knew where she stood. It took the system
18 within RTC to let us know that we could talk to the
19 Office of the Independent Counsel approximately
20 another two weeks, but we knew in advance and we were
21 talking anyway. That's unusual, that's very unusual
22 that you can't talk with the people that you've given

1 your referrals to, can't answer their questions, you
2 can't assist them in their investigation.

3 I think what they were trying to do here is
4 trying to shut us down.

5 Q What do you mean by that?

6 A Shut us down?

7 Q Yes.

8 A Not be involved in the investigation at
9 all, and shovel that all over to Pillsbury, Madison
10 and let them be the group that interrelates with the
11 Office of Independent Counsel, but that poses
12 problems for the independent counsel. There was a
13 lot of -- a myriad of legal problems can be
14 associated with dealing with attorneys that represent
15 an agency separate and distinct from what we're
16 talking about.

17 Q Just for clarification purposes, these
18 events take place in '94?

19 A Yes.

20 Q After the submission of the criminal
21 referrals, after the appointment of Fiske, and later
22 Starr?

1 A Yes, but it was probably their high point
2 was January, February, March, April, probably the
3 first five, six months of '94.

4 Q On the same day -- two days I believe that
5 you testified before the House Banking Committee and
6 in your presence, Jean Lewis also testified, and I
7 want to read to you a quotation from her opening
8 statement from that session. She said that there was
9 a "concerted effort to obstruct, hamper, and
10 manipulate the results of the investigation" that is
11 the investigation of Madison by persons in the RTC,
12 the U.S. Attorney's office under Paula Casey and main
13 Justice in Washington.

14 MR. KRAVITZ: Is that all a quote or are
15 you now paraphrasing?

16 MR. BARTOLOMUCCI: I think I end quoted,
17 didn't I?

18 COURT REPORTER: Yes.

19 MR. KRAVITZ: Okay, sorry.

20 MR. BARTOLOMUCCI: The record will reflect
21 it.

22 BY MR. BARTOLOMUCCI:

1 Q Do you share that view?

2 A Yes, I do. Part of it I am directly
3 familiar with. Part of it was firsthand knowledge by
4 her as she tried to trace that first referral,
5 07004. That's -- I don't think -- I think that's the
6 one that she's primarily referring to with regard to
7 Justice and the United States Attorney's office in
8 Little Rock.

9 Q As you heard her lay out the story as she
10 saw it, was it factually accurate, to the best of
11 your knowledge and memory?

12 MR. BOCK: I'm going to instruct
13 Mr. Iorio not to answer that question unless you want
14 to give him the entire I think it was 10-page
15 statement of this woman. There's a lot of statements
16 in there and they're obviously her opinions.

17 BY MR. BARTOLOMUCCI:

18 Q Fair enough. In general terms, did you
19 agree with the thrust of her testimony?

20 A I don't -- I don't remember all of her
21 testimony, but I can say that the basis of what I
22 have said here this afternoon, I reached the same

1 conclusion that she reached based on the facts that I
2 have presented in my deposition.

3 Q Do you have any knowledge of contacts
4 between the White House and the Resolution Trust
5 Corporation regarding Madison or the Madison
6 referrals?

7 A I have no direct information, no. I know
8 what I've read in the paper, documents that I have
9 seen, but as far as having any direct firsthand
10 information, no, I do not.

11 Q What about firsthand information of
12 contacts between Webster Hubbell and the RTC or
13 persons in the RTC?

14 A No, I do not. There are some advantages to
15 being in Kansas City.

16 Q Barbecue, for one, I understand.

17 A Yeah.

18 Q Let's talk about the events of February, I
19 believe it's 2, 1994 when April Breslaw comes to
20 visit the Kansas City office. Why was April Breslaw
21 in Kansas City on that day?

22 A April was part of the civil review team. I

1 objected to her being part of the civil review team
2 since she was the investigator that was initially
3 assigned the institution. And I thought how can you
4 review somebody's work if they're part of the team
5 that's reviewing it? She's got a vested interest.

6 Q As being on the criminal side, why were you
7 really interested or involved in how the civil review
8 was being conducted?

9 A We had all the records, so they couldn't --
10 they couldn't commence or do a civil review without
11 going through the records, so we were involved
12 because we were the caretaker of the records.

13 Q It impacted you because you had the
14 documents?

15 A Yes.

16 Q Why did you particularly care, however, who
17 was conducting it?

18 A Conducting the civil review?

19 Q Yes.

20 A Other than her being involved, I didn't
21 care. I didn't think it looked good for the
22 corporation.

1 Q So you were stepping out of strictly a
2 criminal function and thinking about the RTC more
3 broadly?

4 A Yeah. I think approximately 45 days, 60
5 days, sometime later she did recuse herself from
6 being involved in the civil review.

7 Q April Breslaw?

8 A Yes.

9 Q Who did you voice your concerns to?

10 A I sent an E-mail to Mr. Dudine, and I think
11 he talked to Mr. Hines, but I don't really know that
12 for sure.

13 Q Did you get some response from Mr. Dudine?

14 A No.

15 Q To your knowledge, was April Breslaw's
16 recusal her own decision or was she ordered to --

17 A I do not know. I don't know -- I don't
18 think I got to answer your question, why she came to
19 Kansas City -- oh, I did. I did answer it, I'm
20 sorry.

21 Q As part of the civil review, she was
22 there.

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1 A Right.

2 Q What did she do while she was in the
3 office?

4 A She flew in in the morning and spent most
5 of the morning reviewing records. We went to lunch.
6 Then after lunch, sort of towards the middle of the
7 afternoon, she met with Jean Lewis and talked with
8 Jean. That's the only time that she was ever in
9 Kansas City, before or after.

10 Q And it was on that day while in Kansas City
11 that a conversation between Ms. Breslaw and Ms. Lewis
12 was taped?

13 A Yes.

14 Q Did you have any knowledge that Ms. Lewis
15 was going to tape Ms. Breslaw?

16 A No, I didn't.

17 Q Assuming that it was volitional?

18 A I had no knowledge.

19 Q Ms. Lewis has said that initially the
20 recording was accidental or unintentional, but that
21 later she elected to continue the taping. Do you
22 believe her when she says that?

1 A Yes, I think she's telling the truth.
2 That -- you'd have to see that recorder to understand
3 the probability that this could happen, okay.

4 Q Government issue, I take it?

5 A No, I think it's even worse than that. I
6 think it's her own that she had had for about nine or
7 10 years, but sometimes it would just start up and
8 sometimes it would stop. I've been recorded, a lot
9 of people have been recorded while talking in her
10 office and saying things. I don't think it was an
11 intentional act on her part when it started, but by
12 her own admission, once she knew that it was running
13 at some later time, she decided to continue. That is
14 her statement.

15 Q As I read the House Banking hearing
16 transcript, a number of the members tried to ridicule
17 the possibility that this recorder would have turned
18 itself on, but you don't find that ridiculous?

19 A Well, if you couldn't -- if you didn't have
20 the opportunity to see the recorder and see how it
21 operated, the crappy little toggle switch -- once you
22 see it, I think you will understand the possibility

1 that it could have occurred. Without seeing it, it
2 doesn't make any sense.

3 Q Now, you say that Breslaw was in your
4 office as part of the civil review. As part of that
5 civil review, would the issues that she was
6 interested in be ones that she might want to discuss
7 with Jean Lewis?

8 A Well, that's a very good question, whether
9 or not Whitewater caused a loss to Madison is an
10 issue that was covered in the criminal referral, it's
11 not a civil issue. Again, we're back to that same
12 point.

13 Q Well, what I'm trying to get at is Breslaw
14 has said that she had no intention of going to see
15 Jean Lewis, and my question to you is did the reason
16 for her being there, was it one that would have made
17 it logical and natural that she would want to talk to
18 Lewis as the person who had the most Madison
19 knowledge?

20 A Most knowledge, yeah. Everyone on a civil
21 review team who came to Kansas City sooner or later
22 went in and talked to Jean Lewis because she knew

1 more than anybody else. April Breslaw wasn't
2 different than anybody else.

3 Q Did Breslaw talk to other investigations
4 people while she was there?

5 A I think she did talk to maybe one or two
6 others about different institutions, not about
7 Madison.

8 Q Breslaw has also said that Lewis was not
9 involved in the civil side of Madison. Is that a
10 true statement?

11 A That's not true.

12 Q Can you explain?

13 A When the civil review started, the only
14 person who was there from outside of our office was
15 an investigator from Denver by the name of Tom
16 Murray. And then Gary Watts shortly thereafter was
17 involved, he was an investigator out of Washington,
18 D.C., but we had a number of people both in the
19 criminal department in Kansas City and in other
20 departments in Kansas City that were involved in the
21 civil review simply because we were there, we had
22 manpower and we helped.

1 A number of those people were given
2 achievement awards for the work that they did on the
3 civil review. I have never understood why it was so
4 important to say that they weren't involved when they
5 were and they got achievement awards for their work.
6 I don't understand that.

7 Q Breslaw also said in her House testimony
8 that you "escorted" her to Lewis, to Lewis's office,
9 and "set her up" to be talked to, to be interviewed
10 by Lewis. Is there any truth to that?

11 A She tried to see Jean Lewis earlier in the
12 day, but Jean was not available. I don't remember
13 what was going on. And I showed her where Jean's
14 office was, okay, but later in the afternoon when she
15 went in to talk with Jean, she went in there on her
16 own. I didn't take her in there.

17 I saw that the door was closed and I went
18 in and knocked on the door and I saw she was in
19 there, and I said oh, okay, because then I knew that
20 they had hooked up, but no, I did not escort her to
21 Jean's office.

22 Q The first time she went to Jean's office,

1 that was at her request, at Breslaw's request?

2 A I don't remember. I think when she came
3 down, she said she wanted to see such-and-such
4 documents. And I had do you want to talk to Jean.
5 She handled it. And she said yeah, I think -- yeah,
6 I want to talk to Jean. It wasn't a big deal. I
7 mean, I don't think maybe she had thought of it
8 before, but, you know, everybody else was talking to
9 her, I didn't think it was a big deal that she wanted
10 to talk to her. I would have been surprised if she
11 didn't want to talk to her.

12 Q What do you think of the suggestion that
13 you tried to manipulate April into Jean's office for
14 surreptitious recording?

15 A I never liked that story.

16 Q This may seem --

17 A It didn't accomplish anything. What does
18 it accomplish? You know, she went in to talk to Jean
19 on her own.

20 Q This may seem a strange question, but is
21 there a sofa in Jean Lewis's office or was there?

22 A No, no sofa, never was a sofa in there.

1 Q Speaking hypothetically, if the taping was
2 intentional on Jean's part at the outset, and I
3 stress the "if" here, would you condone that
4 behavior?

5 A No, no. We have never done that.

6 Q And you didn't condone it, what happened?

7 A No, no, I have not. I think luckily for
8 Jean, I don't think that was a criminal act in the
9 state of Missouri. In some states, that would have
10 been a criminal act but it wasn't in the state of
11 Missouri.

12 Q Did -- would the responsibility have fallen
13 upon you to initiate or make a decision about
14 disciplinary action because of that incident?

15 A Normally I would say yes, but with regard
16 to Jean and the position that she occupied, anything
17 that came up regarding Jean, I went right to
18 Mr. Dudine and he went on up the ladder. And I
19 really didn't have any problems with that because of
20 the amount of press coverage that was going on and
21 the fact that she was so well-known. To be quite
22 frank with you, I would prefer that Washington made

1 those decisions and I didn't have to make them, so
2 that didn't bother me at all.

3 Q So the call about whether or not to
4 investigate or discipline was above you?

5 A Yes.

6 Q You've already told us that you didn't
7 think it was appropriate for Breslaw to be conducting
8 or be part of the civil review, and that was because
9 of her prior involvement in the Madison civil work?

10 A Yes.

11 Q Do you think that's a reason why
12 Ms. Breslaw might have a personal stake in
13 downplaying the impact of Whitewater Development
14 Corporation on Madison?

15 MR. KRAVITZ: I object to that question. I
16 mean, if you want to ask him whether he has any
17 evidence of whatever you're referring to in that
18 question, I'm not going to object to that, but I mean
19 it's calling for rank speculation.

20 BY MR. BARTOLOMUCCI:

21 Q Let me try to rephrase it. To your mind,
22 and as someone who has to, in his work, be sensitive

1 to potential conflicts, is it logical that given
2 Breslaw's earlier work on Madison, that she might
3 have a motive to defend what she had done and thereby
4 sacrifice some objectivity?

5 MR. KRAVITZ: Same objection. I mean, I
6 really think it's the same question. I'm really not
7 trying to be obstructive here, obstructionist here,
8 but this is -- questions and answers get into the
9 records in these depositions and get read out of
10 context in open hearings, and I just am not sure why
11 we need to be littering our record with what I think
12 everybody here would agree is pure speculation.

13 MR. BOCOCK: I think your objection is
14 well-taken in most respects. I think probably
15 Mr. Iorio would be entitled to give the basis of his
16 conclusion that it would create a conflict of
17 interest, which I think would be a proper question.

18 MR. KRAVITZ: I think he's already said
19 that he thought there was a conflict of interest.

20 MR. BOCOCK: I think a proper question
21 might be why. That would be very close to what you
22 asked and not be objectionable.

1 BY MR. BARTOLOMUCCI:

2 Q Taking that as a friendly amendment, tell
3 us once more and with some more elaboration about why
4 you thought Breslaw -- there was a conflict of
5 interest for Ms. Breslaw to be working on the civil
6 review.

7 A She was the lead investigator when she was
8 in the FDIC that had handled that institution, and
9 she had reached what I thought were valid conclusions
10 on why all the civil claims were closed out. I even
11 felt more comfortable that her conclusions reached
12 were correct when Ken Foust did the investigative
13 review of Madison and furnished his documents to
14 PLS. I felt very comfortable. And I thought of two
15 things. I thought, number one, it made the
16 corporation look bad that when you review a decision,
17 you shouldn't let the person who made the decision be
18 part of the review process, okay. I thought that
19 made the corporation look bad.

20 And I thought from a very -- from an
21 ethical standpoint, just a pure conflict issue, that
22 she shouldn't be involved in it. I have no -- other

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1 than that, that was the only motivation I had.
2 That's the only information I had.

3 Q I want to show you a document at this time,
4 it's Bates numbered GD 0005. It's a memo dated
5 February 18, 1994 from Gary Davidson, investigator,
6 civil fraud to L. Richard Iorio, field investigations
7 officer. If you would, would you read the first two
8 paragraphs into the record?

9 A "On January 11, 1994, you requested that I
10 conduct a preliminary investigation into Madison
11 Guaranty for possible civil fraud claims. Procedures
12 for conducting a civil fraud investigation require a
13 systematic approach of gathering information by
14 reviewing available documentation, interviewing RTC
15 personnel. On January 13 or 14, I called the
16 assigned PLS attorney, April Breslaw, for the purpose
17 of asking whether she knew of any fraudulent activity
18 that was not addressed in the criminal referral.
19 Before I could ask my intended question, April asked
20 if I was conducting investigation into Madison
21 Guaranty. After acknowledging that I was, she
22 indicated that what she was about to tell me was

1 being stated as politely as she could. April felt I
2 should know there are some RTC people in management
3 positions that would take a dim view of me
4 investigating Madison Guaranty. She also advised me
5 I should be very careful who I talk to and what I say
6 because of the people associated with Madison
7 Guaranty."

8 Q Do you remember receiving this memo?

9 A He came to me and told me of this
10 conversation, and I said -- and this was -- I can't
11 remember the time. I can't remember if he told me a
12 day or two or three or four days. I don't remember,
13 but I said you need to write that up, you need to
14 document that, and he did.

15 Q So he communicated this information to you
16 orally and you were sufficiently impressed by it that
17 you thought it should go on paper?

18 A Well, I don't know that I was impressed by
19 it. That was very early, very early in the game, and
20 I thought it was unusual, okay, so that's why I asked
21 him to document it.

22 Q Did he explain to you further what was

1 meant by persons would take a dim view?

2 A No, that was strictly speculation. I don't
3 know that he knew what she meant and I certainly
4 didn't know. No, it's sort of, you know, beware.

5 Q Did you ever discuss this statement with
6 April Breslaw?

7 A No.

8 Q Based upon the way that Mr. Davidson
9 explained this to you, did it seem that the memory of
10 it was vivid in his mind?

11 A Yes, and at that point in time, he was
12 sharing a large office with another investigator, and
13 so unbeknownst to Mr. Davidson, I questioned the
14 other investigator and I said are you familiar with
15 such-and-such a phone call, and the investigator said
16 no, but I remember that he was very upset and
17 exercised by what was said over the phone and
18 appeared very shocked, but the investigator said I
19 have no idea what was said.

20 So you can take that, you know, a number of
21 ways.

22 Q So you're saying that Mr. Davidson shared

1 an office with someone who witnessed one half of this
2 conversation?

3 A Yes.

4 Q And that Davidson appeared to be very
5 exercised as a result of what was said?

6 A Yes. He interpreted it immediately as a
7 threat.

8 Q Davidson?

9 A Yes. I don't know if I would say a strong
10 threat or mild threat, but definitely a threat.

11 Q What's your reaction to this?

12 A Oh, you'd have to know April Breslaw,
13 okay. I don't know. April is kind of hard to get
14 along with for an investigator.

15 Q Now, the date on this memo, February 18,
16 '94, this is at the same time that the civil review
17 is going on?

18 A Yes.

19 Q Has Pillsbury, Madison been hired at this
20 point?

21 A I don't know. The date that he wrote this,
22 they would have. The date that it occurred, I don't

1 know. They might -- maybe not. 13th or 14th, they
2 maybe had not been hired yet.

3 Q But it was in that ballpark?

4 A Yes.

5 Q Turning your attention to the matter
6 involving Ms. Lewis's meeting and conversation and
7 release of documents to Congressman Leach, did you
8 know that she was going to do this in advance of her
9 doing it?

10 A No, I did not.

11 Q Do you know what she gave to Congressman
12 Leach?

13 A Specifically, no. Later she told -- we
14 didn't know -- Lee Ausen, her immediate supervisor
15 and I did not know about this until, oh gosh, I think
16 maybe when Leach made his speech on the House and --
17 on the House floor and released documents. I think
18 maybe somewhere -- I don't know what the time is,
19 March, April, somewhere in there.

20 Q So Leach made a public statement and that's
21 when you found out about it?

22 A And then she told us what she released, she

1 gave him I think it was the referrals and some other
2 documentation and I picked up the phone and called
3 Washington, and I said this is what's happened. And
4 I said I don't know what you're going to do but my
5 recommendation is that you probably shouldn't do
6 anything.

7 Q Let's take that piece by piece. Was it
8 your view or am I correct to assume that any decision
9 about what disciplinary action, if any, should be
10 taken was again above you?

11 A Yes.

12 Q Who would have made that call?

13 A I gave the information to Jim Dudine, and I
14 would imagine that Jim Dudine was talking to Tom
15 Hindes or maybe directly to Ellen Kulka. I really
16 don't know.

17 Q Dudine was chief of investigations in
18 D.C.?

19 A He was director of investigations, yes.

20 Q And Hindes was?

21 A He's in charge of PLS, he's at the top in
22 Washington.

1 Q But you said it was your advice to them not
2 to take any action against her?

3 A Yes. This was -- you know, this was sort
4 of a culminating thing. This was after the problems
5 where we couldn't talk to the Office of Independent
6 Counsel. You know, this thing, it just sort of built
7 up.

8 Q It's 1994, it's after all these events
9 we've talked about today?

10 A Yes, yes. And I -- you know, I'm not -- it
11 caused a lot of problems in the office when she did
12 this because this is not something investigators do,
13 okay. We don't give anything to nobody. So it
14 caused a lot of problems, caused a lot of hard
15 feelings. I don't know that I would have done it, I
16 don't know that I would or I wouldn't. I can
17 understand why she did it. I'm not saying that I
18 agree, but I can understand why she did it, okay.
19 There's a lot of people in the office who didn't, a
20 lot of people who did. It caused a lot of conflict
21 in the office.

22 Q Do you think she did it out of a sense of

1 frustration?

2 A I think so. I think she felt like the
3 doors were closing on her and she didn't have
4 anything else to do, and so she did it.

5 Q Is it your impression that she did it out
6 of personal interest or some sort of larger interest?

7 MR. KRAVITZ: Why don't you ask him whether
8 Ms. Lewis has said anything to him or whether he has
9 any knowledge as to why Ms. Lewis did it rather than
10 asking him just to speculate?

11 MR. BARTOLOMUCCI: No, I'm assuming he is
12 incorporating what knowledge he has and if it's --

13 MR. KRAVITZ: Why don't you ask him first
14 if he has any knowledge so at least we can know for
15 the record whether we're in the realm of speculation
16 or knowledge.

17 MR. BOCOCCO: Why don't we restate the
18 question.

19 BY MR. BARTOLOMUCCI:

20 Q Let me start again. Have you spoken to
21 Ms. Lewis about what she did?

22 A Yes, and I said why --

1 MR. BOCOCCO: Wait a minute. What's the
2 next question?

3 THE WITNESS: Okay, I'm sorry.

4 BY MR. BARTOLOMUCCI:

5 Q What did she tell you about why she did it?

6 MR. BOCOCCO: There we go.

7 THE WITNESS: I think she was frustrated,
8 she thought -- she verbalized to me that she thought
9 the investigation was being impeded, that there was
10 obstruction and she was unable -- that we were going
11 to be unable to complete our job, and she didn't
12 think that there was any other avenue open for her,
13 that this was the only thing that she could do to
14 keep things moving along.

15 BY MR. BARTOLOMUCCI:

16 Q Back on the record after a break, returning
17 to a prior issue about the November '93 memo which
18 you said was backdated to September, is this that
19 memo?

20 MR. KRAVITZ: Does it have a Bates number
21 on it?

22 MR. BARTOLOMUCCI: It does.

1 MR. BOCK: MC 0772 is the document
2 identification number.

3 (Witness reviewed the document.)

4 THE WITNESS: It might be, but this is not
5 the document I remember, but I might not be
6 remembering the right thing. This language is very
7 similar, but I don't --

8 BY MR. BARTOLOMUCCI:

9 Q Could you read the language that you're
10 referring to and say what page it's on?

11 A It's under criminal referral, and it's --
12 what page is it? MCO 776. And it's under the
13 heading criminal referral and it says A, "review in a
14 timely manner criminal referrals prior to filing with
15 the appropriate law enforcement authorities. It must
16 be understood that criminal referrals will be filed
17 in a timely fashion. Under no circumstances shall
18 legal's review unduly delay the filing of criminal
19 referrals." There's a B there, it says "consult with
20 the appropriate PLS litigation" --

21 Q I think that's enough. To your knowledge,
22 this is dated September 8, '93, had there been a

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1 policy of reviewing criminal referrals "prior to
2 filing with the appropriate law enforcement
3 authorities"?

4 A No.

5 MR. KRAVITZ: As of what time?

6 MR. BARTOLOMUCCI: Prior to --

7 MR. BOCK: I think he means September 8,
8 1993.

9 BY MR. BARTOLOMUCCI:

10 Q Do you remember seeing this document on
11 September 8, '93 or thereabouts?

12 A No. The document that we saw, and I can't
13 say that this is or isn't the document. This is not
14 the document that I remember.

15 Q Would that document have been routed to you
16 according to the "to" block?

17 A Uh-huh, yes. Yes, yes, it would have.

18 Q But you don't remember seeing it?

19 A No.

20 MR. BOCK: The question is, do you
21 remember seeing document MC 0772; right?

22 MR. BARTOLOMUCCI: Right.

1 THE WITNESS: I don't know. This one could
2 well be it because it's not initialed so it is not
3 valid, but it doesn't say draft on it. I do remember
4 when we got the document, I called and I said Jim,
5 have you seen this document? He said no, so I faxed
6 him a copy. Now, I don't remember -- it's been a
7 long time. I don't remember the document being this
8 long, but that doesn't really mean anything.

9 MR. KRAVITZ: Can I see that?

10 BY MR. BARTOLOMUCCI:

11 Q There are allegations that Jean Lewis
12 leaked Madison information to the press. Do you have
13 any knowledge of her doing that?

14 A No, I don't believe she leaked any
15 information to the press.

16 Q Why don't you believe that?

17 A We maintained a log. Every time we were
18 contacted by the press, we would do a little E-mail
19 and kick it to the public affairs person. You know,
20 they would call you all hours of the day and night,
21 at home, at the office, and many times they would say
22 we don't want you to -- don't say a word, but did you

1 know this, and I would go thank you, you need to talk
2 to so-and-so.

3 I think -- I don't think that anyone in
4 Kansas City investigations gave information about the
5 investigation to the press. I've never believed
6 that. And the reason I say that is the
7 information -- the information that was attributed to
8 us, you know, we get a call, did somebody in your
9 office give this to the press, many times that was
10 information we didn't know, so I never thought that
11 we leaked information to the press.

12 Q And you actually held a meeting and said
13 this to some of your staff?

14 A Yes.

15 Q And you never leaked any information to the
16 press?

17 A No, I didn't.

18 Q If someone had leaked Madison information
19 to the press, who would have had access to such
20 information in terms of numbers of people?

21 A Well, you've got -- in Kansas City you've
22 got the PLS people, then you get to Washington,

1 you've got everyone in RTC Washington had knowledge
2 or had documentation regarding the Madison
3 investigation. It could have been a lot of people.

4 Q Can you give it a number, a ballpark
5 figure?

6 A Oh, gosh, a hundred? A lot -- there's a
7 lot of different people that had information.

8 Q Let's turn to the events of August 1994.
9 Was it during that month that you were placed on
10 administrative leave?

11 A Yes, August of '94.

12 Q Do you remember the exact date?

13 A It was August 15.

14 Q Who else was placed on administrative leave
15 at that time?

16 A Lee Ausen and Jean -- Jean Lewis was placed
17 on administrative leave three or four days later.

18 Q And that was the date that you were
19 notified and three days later she was notified?

20 A She was in the hospital and they waited
21 until she came back from the hospital and then they
22 placed her on administrative leave. All this stuff

1 is going on in the press and she knows when she comes
2 back she's going to go on administrative leave, too.

3 Q Did she learn of this while she was in the
4 hospital?

5 A Yes.

6 Q Why was she in the hospital?

7 A I don't remember if it was blood pressure
8 or ulcers or something. It was one or the other. I
9 can't remember now.

10 Q I'm sure this didn't help.

11 A No, I don't think so.

12 Q I must confess, I'm not familiar with the
13 term "administrative leave" or I wasn't before. Can
14 you tell me what that signifies?

15 A You are removed from your function, you
16 turn over your keys, your credit cards, anything
17 that's the government's, and you're told to go home.
18 They say well, you're going to be on administrative
19 leave for a week or two weeks or whatever, but don't
20 come back unless we tell you.

21 Q Was this paid or unpaid leave?

22 A No, this was paid. This was paid.

1 Q How long were you on administrative leave?

2 A We were on administrative leave for two
3 weeks.

4 Q What are the usual or some of the reasons
5 why someone would be placed on administrative leave?

6 MR. BOCK: If you know.

7 BY MR. BARTOLOMUCCI:

8 Q If you know.

9 A Yeah. We were unfamiliar with the
10 process. I have no idea what happened, what's the
11 rationale for doing it. Previously to us going on
12 it, I had never heard of it.

13 Q Had it ever happened to anyone in the
14 Kansas City office during your tenure there?

15 A No.

16 Q How did you find out? Describe for me the
17 circumstances under which you were informed that you
18 were placed on administrative leave.

19 A It was on a Monday morning, I want to say
20 about 9:30, 10:00 in the morning.

21 Q Were you at the office?

22 A I was at the office, and I got a call from

1 Jack, I can't think of Jack's last name right now.

2 Q Jack Ryan?

3 A No, no, I would remember that. Jack -- I
4 can't remember Jack's name. It's on the letter,
5 isn't it? He wanted me to come over to his office.
6 He was in charge of the -- he had personnel and that
7 group and he wanted me to come over to his office.

8 Q He was a personnel officer in Kansas City?

9 A No, he was a director of something.

10 Personnel was one of the functions, one of the
11 functions under his --

12 Q Was he in sort of the CEO's office or --

13 A No, just to his office. I went in there.

14 Jack Newcomb was there and Russell Kauffman and Wayne
15 Cooper.

16 BY MR. BARTOLOMUCCI:

17 Q What did they tell you?

18 A They said we received this letter from
19 Washington and handed it to me. And I said -- I read
20 it and I said okay.

21 Q What did the letter say?

22 MR. BOCK: Was the gentleman's name you

1 were trying to think of Tom Sarisky?

2 MR. BARTOLOMUCCI: He said Jack somebody.

3 THE WITNESS: You gave me Jack's name.

4 MR. BOCOCC: Jack Newcomb.

5 MR. KRAVITZ: Can you identify what it is
6 that you're reading from or using to refresh your --

7 MR. BOCOCC: My notes.

8 MR. KRAVITZ: I think if you're going to
9 use them to refresh your client's recollection --

10 MR. BOCOCC: I'm not. I'm reading names to
11 him, reading someone names. He's got the refreshed
12 document.

13 BY MR. BARTOLOMUCCI:

14 Q Well, did the letter say more than that you
15 were being placed on administrative leave or was that
16 the gist of it?

17 A It was a short letter. I think it was
18 maybe like three paragraphs on letterhead, on an
19 E-mail. It didn't say much.

20 Q Do you remember whose signature was on the
21 letter?

22 A Tom Hindes. I remember that.

1 MR. BOCOCC: We've got it.

2 THE WITNESS: They have got a copy of the
3 letter.

4 BY MR. BARTOLOMUCCI:

5 Q Would you care to read the critical part of
6 it?

7 A Well, I thought it was all pretty
8 critical. It's five little paragraphs. It's dated
9 August 12, I'm sorry, and I think that's a Friday --
10 that's on a Friday and I think I received it on the
11 15th. They said "you are hereby placed on
12 administrative leave to be effective immediately upon
13 receipt on August 15, 1994. You will return to
14 active duty status effective the beginning of your
15 tour of duty on August 29, 1994. This status
16 provides you continuation of full pay and benefits.
17 You are restricted from all RTC offices including all
18 locations in the Kansas City metropolitan area.

19 "You may make arrangements with Jack W.
20 Newcomb to remove any personal items you have at your
21 workstation. Your FDIC RTC identification card must
22 be returned to Mr. Newcomb. Your time and attendance

1 forms will be completed and processed to reflect
2 administrative leave during the time in which you are
3 in this status. Please note that during this period
4 of administrative leave you are prohibited from
5 engaging in any kind of outside employment. If you
6 have any questions you may contact Randy L.
7 Mendelsohn, chief, employee relations, OHRM," gives a
8 Washington, D.C. phone number.

9 Q What happened after you were given this
10 letter in that office?

11 A I was escorted back to my office by Wayne
12 Cooper.

13 Q Who is he?

14 A He's the facilities manager. And I gave
15 him my government credit card, my keys, so on and so
16 forth, and then I thought well, I'm going to get my
17 managers together and they can hear from me what's
18 happened and I'm going to put one of them in charge,
19 and that's what I did. That just drove them crazy
20 that I did that.

21 Q Drove who crazy?

22 A Well, Wayne Cooper and the people across

1 the street. They were afraid Washington was going to
2 be mad at them. I really didn't care if Washington
3 was mad at them or not.

4 Q Because he was trying to get you out of the
5 building?

6 A Yeah, as quick as he could.

7 Q Did he physically walk you out of the
8 building?

9 A Oh, yeah, walked me to my car.

10 Q Did he hold your arm or anything like that?

11 A No, he didn't. No. Wayne is a nice guy.
12 He apologized all the time he was doing it. He said
13 I've got to do this, I've got to do this, I'm sorry.
14 No, he was fine.

15 Q What was your immediate reaction when you
16 learned of this?

17 A Well --

18 Q Were you surprised, astonished?

19 A Yes and no. The things had sort of been
20 building up, and I didn't know what might or might
21 not happen. I was kind of surprised by this. You
22 know, I was -- it surprised -- I wasn't surprised

1 that something happened. I was surprised that this
2 happened, okay.

3 Q Were you embarrassed or mad?

4 A No. I really didn't -- no, those aren't --
5 that didn't fit my range of emotions. I was trying
6 to figure out what is going on, why -- there's got to
7 be more to this than this letter. What is going on.
8 And nobody -- but there was no one to talk to, no one
9 to give you any information.

10 I tried to contact this lady, but I got no
11 answer and the reason I received no answer is because
12 she was in Kansas City ready to start the OHRM
13 investigation as to whatever allegations there were
14 against us. So really she was unavailable to talk
15 to.

16 Q So did anyone explain to you why you were
17 put on leave?

18 A No, never ever.

19 Q Did you talk to Ms. Lewis and Mr. Ausen
20 about this and --

21 A Later I talked to them, and they had no
22 information, either.

1 Q No one explained it to them?

2 A No.

3 Q Subsequently did anyone ever talk to you
4 about it?

5 A No.

6 Q Or during that two-week period you were not
7 contacted?

8 A Never.

9 MR. BOCK: Let me just say for the record
10 here, too, that Mr. Iorio retained me and on his
11 behalf I asked Messrs. Mendelsohn and Sarisky what
12 the basis of the administrative leave was. They
13 wouldn't tell me. I offered to make Mr. Iorio
14 available to answer any questions, give them any
15 documents, answer any charges, provide any
16 assistance, they declined that all.

17 BY MR. BARTOLOMUCCI:

18 Q Did you or do you suspect that this
19 employment action was related to Madison?

20 A That's what I thought. That's what I still
21 think.

22 Q I'm correct, aren't I, that the three

1 people placed on leave, you, Mr. Ausen, Ms. Lewis,
2 are the only three people whose names appear on every
3 single Madison referral?

4 A Yes.

5 Q Did anything finally come of this? Was any
6 final action taken against you, sort of a sanction of
7 any sort?

8 A Yes and no.

9 Q Other than the leave itself.

10 A Oh, it drags on. It raises up its ugly
11 head from time to time. We can't -- we're unable to
12 get any information with regard to why, what were the
13 reasons, what are the allegations, are there any
14 facts, can we respond to them, nothing. We were
15 involved in this as recently as this week, okay.

16 Q Throughout your employment and experience
17 with the government, have you ever heard of a
18 situation where someone was subject of an adverse
19 employment action and they didn't have a chance to
20 respond to charges or to talk about it or discuss the
21 matter?

22 A They don't consider this an adverse

1 employment action because they say I wasn't hurt, I
2 didn't lose my job and I was allowed to come back to
3 work. I think that begs the question because we
4 don't talk about reputation and character.

5 Q You were hurt by this?

6 A I think I was, yes.

7 Q Did it undermine your authority when you
8 returned to work?

9 A Very much so. It took a considerable
10 period of time to put things back together and get
11 the structure in the system operating again.

12 MR. BOCK: I would just like to make a
13 statement. As my official 26 cents, Mr. Iorio made a
14 claim to the RTC under the what so-called plan of
15 indemnification, has a big long name, but that's what
16 it's known as, and that claim was allowed in part,
17 but it was denied as to any claim for expenses he
18 incurred, and there's not a huge number, but expenses
19 he incurred, it's a lot to Mr. Iorio, in connection
20 with the OMR -- OHRM investigation. One of the
21 explanations he was given is he was not acting in
22 official capacity when -- that the claim against him,

1 the action which we, of course, claim is why he was
2 put on administrative leave, was not taken against
3 him in an official capacity, and the reasoning of
4 these wizards is that if he's placed on
5 administrative leave, there had to be a reason, and
6 the reason had to be he was not acting in the best
7 interest of the RTC, and if you're not acting in the
8 best interest of the RTC, by definition, you can't be
9 acting in an official capacity, therefore, they
10 reasoned by use of a circular model he couldn't
11 possibly be acting in his official capacity so he
12 doesn't get indemnified, which is particularly
13 interesting when we are given no basis of the claim
14 of why he was put on administrative leave.

15 So now not only has Mr. Iorio not been
16 given the basis for being put on administrative leave
17 nor given an opportunity to answer questions, he
18 asked to come forward under oath to answer questions
19 and was denied that privilege, but now economic
20 sanctions are being levied against him and he's
21 not -- his claim has been denied. And the reason his
22 claim has been denied is for secret, undisclosed

1 reasons, he was put on administrative leave, so we
2 have filed an appeal, suggesting to them that maybe
3 before they deny his claim for secret reasons, that
4 they ought to ask and find out if any of the secret
5 reasons are true since it would seem to me that that
6 would have to be a determination RTC makes in
7 deciding whether he was acting in an official
8 capacity.

9 Anyway, just a fascinating sort of Catch-22
10 associated with this whole administrative leave
11 issue. So I've given you my speech, but thank you
12 for listening.

13 THE WITNESS: We have furnished
14 documentation to appropriate parties on this issue
15 this week.

16 BY MR. BARTOLOMUCCI:

17 Q Even Senator Riegle was concerned about
18 this action, wasn't he?

19 A Well, I don't know about Senator Riegle,
20 but I know during the House hearings, Barney Frank
21 was concerned about it, and I learn more every day.
22 More people knew what was going on in administrative

1 leave than I did and I was one of the people
2 involved. I find it kind of interesting.

3 Q Other than this incident, have you ever
4 been sanctioned or disciplined during your time with
5 the RTC?

6 A Never with the RTC or any other position
7 I've ever held.

8 Q Now, Lewis and Ausen were also placed on
9 administrative leave. Can you think of any reason
10 why someone might have done that, why that would have
11 happened?

12 A Not any factual reason, no. They are much
13 in the same position I am. They would like to know
14 also.

15 Q Certain allegations have been raised, as I
16 understand it, that may be related to this action, to
17 the effect that perhaps you showed favoritism to
18 certain people within the office. Is there any truth
19 to that?

20 A No.

21 MR. BOCOCC: What allegations are these
22 that we're talking about? I'm not sure I understand

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1 your question. You said certain allegations have
2 been made.

3 BY MR. BARTOLOMUCCI:

4 Q Allegations that perhaps you were playing
5 favorites within the office, perhaps to persons
6 because they were from Tulsa?

7 MR. BOCOCC: Are you representing to him
8 there are allegations made to that effect or are you
9 making stuff up or what?

10 BY MR. BARTOLOMUCCI:

11 Q I'm asking whether there's any truth to the
12 idea that you played favorites within the RTC.

13 A No. I would like to address the Tulsa --

14 MR. BOCOCC: Just let him ask the
15 questions.

16 BY MR. BARTOLOMUCCI:

17 Q When you returned to the RTC after the
18 administrative leave, did you return to the same
19 position that you had prior to that time?

20 A Yes, I did.

21 Q And you had the same formal
22 responsibilities?

1 A Yes.

2 Q And to your knowledge, no other official
3 sanction has been levied against you as a result of
4 this?

5 A To the best of my knowledge, yes.

6 Q I just have a couple of more questions for
7 you. Jean Lewis, who was also placed on
8 administrative leave, how long have you known her?

9 A I've known Jean since 1991. She was hired
10 in the Tulsa office as an investigator, I think in
11 June of '91, June or July of '91, May, somewhere in
12 there.

13 Q Did you come to form an opinion about the
14 quality of her work?

15 A Well, her work product has always been
16 good. You know, she takes pride in her work and she
17 turns out a good, quality product.

18 Q Do you have an opinion about the quality of
19 the criminal referrals that she prepared and worked
20 on?

21 A Those were good criminal referrals. I have
22 never -- there's no one who was intended to receive

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1 those referrals, i.e., the independent counsel or the
2 United States Attorney or the FBI. I have never
3 heard any criticism from any of those people about
4 those referrals.

5 Q Do you have any reason to believe that her
6 work on Madison was politically motivated?

7 A No, I don't think that's true.

8 Q You find her very dedicated to her job?

9 A Yeah, she's very, very conscientious.

10 Q And do you believe she was convinced that
11 there was criminal activity that took place in
12 connection with Madison?

13 A Yes.

14 Q Were you politically motivated in how you
15 handled the Madison case?

16 A No.

17 Q Do you have anything else which you would
18 like to add before we finish this half?

19 A No.

20 MR. BARTOLOMUCCI: Then I'll just thank you
21 for being so patient.

22 THE WITNESS: Okay.

1 MR. KRAVITZ: Off the record.

2 (Discussion off the record.)

3 EXAMINATION

4 BY MR. KRAVITZ:

5 Q Mr. Iorio, I'm going to apologize in
6 advance. I'm going to be jumping around from subject
7 to subject. My main purpose in doing that is to try
8 to be as efficient as possible and repetitive as
9 little as possible. I'll certainly try to focus your
10 attention on the subject matter that I'm questioning
11 you about before I start asking you questions.

12 Initially, you were asked a question
13 earlier in the deposition about what you were going
14 to do professionally after the RTC closes its doors
15 at the end of 1995, and I believe you testified that
16 you didn't know yet what you were going to do. My
17 question is this. Are you one of the RTC employees
18 who is guaranteed a position at the FDIC?

19 A No, I am not.

20 Q I want to ask you some general questions
21 about what usually happens after a criminal referral
22 is submitted by the Kansas City field office of the

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1 RTC to the relevant United States Attorney's Office
2 and FBI field office in whatever the referral
3 involves.

4 You were asked some questions about how
5 long it usually takes for the RTC field office to
6 be -- to hear something back from the Department of
7 Justice, and I believe you testified that that
8 usually happens in approximately 90 days; is that
9 correct?

10 A At the outside, yes.

11 Q Now, when you said that you usually hear
12 something back within approximately 90 days, what
13 were you referring to that you actually would receive
14 from the Department of Justice?

15 A We might not receive anything; we might
16 just get a phone call. We might get a phone call
17 let's say from the assistant United States Attorney
18 in Omaha that says hey, this ties in with something
19 else I'm working, can you do such-and-such if we need
20 it real quick, or I don't really think we're
21 interested in this, but let me look at it for a
22 while, or I really like this, but I can't get to it

1 for four or five months, that kind of conversation.

2 Q And so what you're saying is that this
3 first communication following the submission of the
4 referral usually occurs sometime within 90 days of
5 the submission of the referral?

6 A Sometimes it occurs within a week,
7 sometimes it's toward the outside, maybe it's at the
8 end of the 90 days. Sometimes they go on them right
9 away, sometimes they don't like it and they give you
10 a declination right away.

11 Q Do these initial contacts usually occur
12 between the RTC and the FBI or the RTC and the U.S.
13 Attorney's office?

14 A It can be either way.

15 Q And you testified that criminal
16 investigators who have worked on referrals tend to
17 follow the referral or follow up on the referral
18 after it's been submitted; is that correct?

19 A Yes.

20 Q Now, when does that usually happen and for
21 what purpose?

22 A The way work is assigned to an investigator

1 is it's assigned on an institution basis, and we try
2 to assign the work so that the investigator is
3 working with the same FBI office or same United
4 States Attorney's office on a repetitive basis so
5 they can establish a good working relationship.

6 Q So that's why you tend to assign one
7 investigator to a number of failed institutions
8 within a given judicial district?

9 A Right. The states that we have, except for
10 some of the populated ones up north, like Oklahoma
11 has two districts -- three now, yes, Arkansas has
12 two, Kansas has got two and it just works better.

13 Q Okay, but what is the purpose for the
14 criminal investigator who has submitted the referral
15 to keep track of what's going on with the referral?

16 A They maintain a file, and they know the
17 date that they sent the referral because we do those
18 return receipt to make sure that the document has
19 arrived. And I don't know if it's any formal
20 procedure. They will be working on other things and
21 maybe they make a note on their calendar or
22 something, but within a period of time, if they don't

1 hear anything, then they start to wonder.

2 Q What is the period of time?

3 A I'd say 90 days.

4 Q So basically, in the usual case a criminal
5 investigator who has submitted a referral to the
6 Department of Justice would have no cause to wonder
7 until approximately 90 days had passed; is that
8 correct?

9 A Yeah, that's probably true.

10 Q And it would be -- and so in the typical
11 case, the RTC criminal investigator wouldn't make a
12 call to the Justice Department, the U.S. Attorney's
13 office or the FBI to find out about the referral
14 until about 90 days had passed?

15 A Uh-huh, yes.

16 Q Now, you testified that your office, the
17 RTC field office in Kansas City, sends out its
18 criminal referrals by return receipt?

19 A Yes.

20 Q So in other words, you actually learn by
21 what comes back in the mail whether or not the
22 referral has actually been delivered to the U.S.

1 Attorney's office and the FBI?

2 A Yes.

3 Q So for your purposes, a formal
4 acknowledgment from the FBI or the U.S. Attorney's
5 office is not necessary, is it?

6 A That's true. We sometimes still get them,
7 though. It just depends. The procedures aren't
8 uniform with the United States Attorney's office.
9 Some send letters of confirmation, some don't.

10 Q When referral C0004 was submitted in early
11 September 1992 to the FBI and the U.S. Attorney's
12 office in Little Rock, was that sent by return
13 receipt mail?

14 A I think so, yes.

15 Q And did a return receipt -- or did a
16 receipt come back in the mail, to your knowledge?

17 A I think so. I really don't pay much
18 attention to that because it is pretty standard.

19 Q You certainly never have been told that a
20 return receipt did not come back?

21 A That's right.

22 Q And so in that case, you didn't need to

1 know -- your office did not need to be notified by
2 the FBI directly to know that the FBI had actually
3 received C0004; correct?

4 A That's true.

5 Q And your office did not need to be
6 affirmatively notified by the United States
7 Attorney's office in Little Rock to know that C0004
8 had actually been received in the U.S. Attorney's
9 office either; correct?

10 A That's true.

11 Q Now, going back to the more general
12 situation that we were talking about before, what
13 you've testified to is that if approximately 90 days
14 have passed since the submission of a criminal
15 referral and the investigators who have worked on the
16 referral have not been contacted by either the U.S.
17 Attorney's office or the FBI, they might make a call
18 themselves to find out what's going on?

19 A Yes.

20 Q What's -- what is really the purpose? What
21 do you want to find out, whether someone is actually
22 conducting a grand jury investigation? What are you

1 trying to learn?

2 A We want to know, is this going to be an
3 ongoing investigation that I'm going to have to
4 allocate resources to? If so, let me know,
5 especially because of the -- it's always been that
6 way for us because we never knew how long we were
7 going to be around, so if you want us to help you,
8 then let us know. And also, there's a records
9 problem. We can't maintain all these records at our
10 office. We have an off-site warehouse that's about
11 12 miles away. So if you're not going to get to it
12 right away, we're going to take these 300 boxes, put
13 them out in the warehouse and bring something else
14 in. So it's a way for us to align our resources.

15 Q It's really a way for your office to plan
16 what it's going to be working on most intensively
17 over the next period of time?

18 A Yes.

19 Q And that's important because your office
20 has limited resources; correct?

21 A Yes.

22 Q You have insufficient resources to focus

1 your attention on all of the failed institutions and
2 possible criminal activity relating to those failed
3 institutions that exist?

4 A At one time, yes.

5 Q You testified earlier, and I'm paraphrasing
6 so if I'm not exactly right, I apologize, but you
7 testified earlier to the effect that in February or
8 March 1993, you became aware that Ms. Lewis had
9 started calling the Justice Department to find out
10 what was going on with referral C0004; is that
11 correct?

12 A Yes.

13 Q Now, to your knowledge, was that period of
14 time, February/March 1993, was that the first time in
15 which Ms. Lewis contacted either the U.S. Attorney's
16 office or the Federal Bureau of Investigation or the
17 main Justice Department to inquire about the status
18 of the 1992 criminal referral in the Madison case?

19 A I think so.

20 Q Did you ever discuss with Ms. Lewis whether
21 that was, in fact, the first period of time in which
22 she had inquired of the Justice Department or any of

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1 its satellite branches into the status of the Madison
2 referral?

3 A She would periodically tell me who she had
4 inquired of and what had happened, and I can't be
5 specific as to the timing, but I think that's
6 approximately the right time.

7 Q Okay. So just so the record is clear, you
8 think that Ms. Lewis told you that around February or
9 March 1993 was the first time that she inquired into
10 the status of the criminal referral with any official
11 of the Department of Justice?

12 MR. BOCOCCO: That's not what you testified
13 to. Do you understand what he's saying?

14 THE WITNESS: Yes.

15 MR. BOCOCCO: In other words, did she say
16 this is the first time I called them or is that the
17 first time you remember her telling you that she
18 called them?

19 THE WITNESS: I think it's the first time I
20 remember her telling me.

21 MR. BOCOCCO: Big difference.

22 BY MR. KRAVITZ:

1 Q Did you ever ask Ms. Lewis whether or not
2 that was the first time she had inquired of any
3 official of the Department of Justice or the U.S.
4 Attorney's office or the FBI into the status of
5 criminal referral C0004?

6 A I don't remember, but I -- I just don't
7 remember.

8 Q Did you have any conversations with
9 Ms. Lewis -- well, strike that.

10 I take it from your testimony, then,
11 that -- well, let me ask it this way.

12 In October 1992, this is now the month
13 after C0004 was submitted to the United States
14 Attorney's office and the FBI, to your knowledge, did
15 Ms. Lewis contact the FBI field office in Little Rock
16 to inquire into the status of that criminal referral?

17 A I don't know.

18 Q To your knowledge in October 1992, did
19 Ms. Lewis contact any official of the United States
20 Attorney's office in Little Rock to inquire into the
21 status of criminal referral C0004?

22 A I specifically -- I don't know, but let me

1 say something that's not quite to that point. Since
2 she had all of the institutions in Arkansas, okay,
3 and there's other referrals out of other
4 institutions, she's talking back and forth with the
5 FBI and United States Attorney quite frequently
6 anyway, okay. So maybe something was said and maybe
7 something wasn't. I don't know.

8 Q Well, actually, I think that's a good
9 point. Is what you're indicating that it's certainly
10 possible that while Ms. Lewis was communicating with
11 officials of the U.S. Attorney's office or the Little
12 Rock FBI office on another matter, she might have
13 made some comment or asked a question about C0004?

14 A I think it's possible.

15 Q Well, let me then rephrase the question
16 this way. To your knowledge, in September or October
17 1992, did Ms. Lewis have any communications with
18 officials of the Little Rock FBI office in which
19 Ms. Lewis inquired about the status of the criminal
20 referral C0004?

21 A I don't know.

22 Q To your knowledge, in September or October

1 1992, did Ms. Lewis have any communications with
2 officials of the U.S. Attorney's office in Little
3 Rock in which Ms. Lewis inquired about the status of
4 criminal referral C0004?

5 A I don't know that either.

6 Q During that time period, September and
7 October 1992, did you ever ask Ms. Lewis to inquire
8 of any official at either the FBI Little Rock field
9 office or the United States Attorney's office in
10 Little Rock what the status was of criminal referral
11 C0004?

12 A I don't think so.

13 Q Do you have any uncertainty about that?

14 A No. The referrals were transmitted in
15 September? I simply don't -- I don't think so, but I
16 don't remember. I don't think so.

17 Q Are you positive that you did not ask
18 Ms. Lewis repeatedly during that time to inquire of
19 the FBI Little Rock field office into the status of
20 the criminal referral C0004?

21 MR. BOCK: Mr. Iorio, he's just asking
22 for your best memory.

1 THE WITNESS: I don't think so.

2 BY MR. KRAVITZ:

3 Q You don't think what?

4 A I don't think I -- I don't think that I
5 told her to contact them, no.

6 MR. BOCK: His question was are you
7 positive you didn't do it.

8 MR. KRAVITZ: Well, that wasn't what the
9 question was, actually.

10 MR. BOCK: Wasn't it? Restate it then,
11 I'm sorry.

12 BY MR. KRAVITZ:

13 Q The first question was whether he ever,
14 during that two-month time period, September and
15 October of 1992, asked Ms. Lewis to contact an
16 official of the FBI or the U.S. Attorney's office in
17 Little Rock to inquire into the status, and he said
18 he didn't believe so?

19 MR. BOCK: He said he doesn't remember,
20 but he doesn't think so.

21 BY MR. KRAVITZ:

22 Q Let me rephrase the question this way. If

1 someone were to say that during that time period,
2 September and October 1992, you repeatedly asked
3 Ms. Lewis to contact either the FBI in Little Rock or
4 the U.S. Attorney's office in Little Rock to inquire
5 into the status of the criminal referral C0004, would
6 that be correct?

7 A No, it wouldn't be correct.

8 Q And you're positive that that would not be
9 correct?

10 A Yes. I might have asked her, have you
11 heard anything, but that quick, I wouldn't have
12 directed her, I don't remember that, no.

13 Q Because that would have been inconsistent
14 with the general policy of waiting about 90 days
15 before it really became a concern that something
16 should be happening; correct?

17 A Yes.

18 Q Toward the end of 1991, you were in the
19 Tulsa office; is that correct?

20 A Yes.

21 Q And your position there was as a supervisor
22 in the criminal investigations section?

1 A No.

2 Q What was your position?

3 A I was assistant director for
4 investigations.

5 Q Did that cover both criminal and civil?

6 A Yes.

7 Q How many investigators in that office
8 worked on criminal matters and how many worked on
9 civil matters toward the end of 1991?

10 A Gosh, I think maybe two or three worked on
11 criminal.

12 Q And how many on civil?

13 A Maybe five or six or seven. I don't
14 remember how many we had.

15 Q And that office had jurisdiction over how
16 many states?

17 A Two.

18 Q Oklahoma and --

19 A Arkansas.

20 Q Now, at that time Ms. Lewis was one of the
21 criminal investigators; is that correct?

22 A Yes.

1 Q In the Tulsa office?

2 A Yes.

3 Q And she had principal responsibility for
4 failed institutions -- well, criminal investigations
5 relating to failed institutions in Arkansas?

6 A Yes.

7 Q And again, this was consistent with the
8 idea of having an investigator assigned principally
9 to a number of failed institutions within one
10 judicial district so that he or she could have an
11 ongoing relationship with the prosecutors and the
12 FBI?

13 A Yes, and also, you know, we inherited the
14 Arkansas shops later than the Oklahoma shops. We
15 didn't initially have the Arkansas institutions.
16 Those were as a result of reorganization, we received
17 those, I think in early '91, so they --

18 Q Before that time, Arkansas was covered by
19 another field office?

20 A By the Kansas City office, yes. Then in
21 1991, we -- early '91 we reported to Dallas as a
22 result of the reorganization, then we started

1 reporting to Kansas City and we were given
2 responsibility for the Arkansas shops, so we had
3 acquired responsibility for those shops later than
4 the Oklahoma shops.

5 Q Do you know how it was that in late 1991,
6 the priority was set among failed financial
7 institutions in Arkansas -- well, strike that. Let
8 me start over.

9 When you were in the Tulsa office of the
10 RTC back in 1991, you were aware that a
11 prioritization was going on as to which failed
12 institutions the RTC field office would focus its
13 investigative resources on; is that correct? I mean
14 that goes on all the time, doesn't it?

15 A Yes, yeah. It was -- yeah.

16 Q It's really kind of a constant process of
17 kind of evaluating what's out there and trying to
18 figure out which institutions should be focused on?

19 A Yes.

20 Q In the criminal area back around that
21 period of time, late 1991/early 1992, what factors
22 were considered in determining which institutions the

1 RTC's limited investigative resources would be
2 focused on in the criminal area?

3 A Well, we would focus on all of the
4 institutions. It was not a question that we would or
5 would not focus. We were going to focus on all of
6 them. It was just a question of which ones would we
7 do first.

8 Q How was that question answered, as a
9 general matter?

10 A Well, if -- and these were all inherited
11 institutions from another office. Some of them had
12 before that been FDIC institutions. If the initial
13 review and the documents that we had didn't indicate
14 that there was anything there, that institution was
15 placed low on the list. Consequently, Madison was
16 going to be way back, one of the lower institutions,
17 but we --

18 Q Just specifically what are you referring
19 to? Why was Madison -- why was Madison low down as
20 of late 1991/early 1992?

21 A Because it had -- all the claims had been
22 closed on it and there was nothing in any of our

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1 documentation that indicated that there was any
2 criminal activity, so that's why it was going to be
3 worked way at the end.

4 Q In other words, you were aware that the
5 Madison case or the failure of the Madison Bank had
6 been the subject of a criminal investigation in the
7 past that actually had resulted in the trial and
8 acquittal of Mr. McDougal; correct?

9 A Yes.

10 Q And as far as you knew, there were no
11 criminal violations in addition to those that had
12 been the subject of the trial of Mr. McDougal?

13 A Yes.

14 Q And that was one of the reasons I think you
15 testified, then, that the Madison case, at least as
16 of late 1991/early 1992 was low down on the priority
17 list for upcoming criminal investigations; is that
18 correct?

19 A Yes.

20 Q What other factors, in addition to previous
21 investigations, were considered by criminal
22 investigators in Tulsa field office back in late 1991

1 or early 1992 in setting priorities among failed
2 savings and loan institutions for criminal
3 investigations?

4 A That's hard to say. We didn't pay much
5 attention to the size of the institution because that
6 wasn't a controlling factor, okay, whether it was a
7 big institution or little institution, that really
8 didn't make any difference.

9 Q Why is that?

10 A Doesn't correlate. Size of institution
11 doesn't indicate whether there's criminal activity or
12 not criminal activity.

13 Q But didn't you testify earlier that one of
14 the reasons why the RTC makes criminal referrals is
15 because in criminal cases, the RTC often has the
16 opportunity to obtain restitution orders?

17 A Yes.

18 Q And isn't it -- doesn't it just make common
19 sense that if all other things are equal, an
20 institution that has failed at greater loss to
21 taxpayers than one that has failed at a smaller loss
22 is more likely to result in a larger restitution

1 order?

2 A If there was criminal activity, but if
3 there's no criminal activity, it doesn't add.

4 Q But if everything else is equal, the size
5 of the loss is something that would be considered in
6 setting priorities, wouldn't you agree?

7 A For the civil area, probably, but not
8 necessarily for the criminal area.

9 Q Well, let me -- what if you had two
10 institutions that both appeared to have similar
11 amounts of fraud involved, criminal fraud involved.
12 Would you then consider -- would you then consider
13 the size of the loss caused by that fraud in
14 determining the RTC's priorities for criminal
15 investigation?

16 A If we knew that information then, yeah,
17 that would probably make a difference.

18 Q So there are circumstances under which the
19 size of the institution or the size of the loss can
20 be relevant in setting priorities?

21 A If that was predetermined, but bear in mind
22 that most of the times we don't know this until we go

1 in.

2 Q Okay. Well, let me ask you this
3 hypothetical question. Let's assume that the RTC
4 Tulsa field office in late 1991 or early 1992 looked
5 at its resources in the criminal investigations area
6 and concluded that it had sufficient investigative
7 resources to conduct an -- a criminal investigation
8 regarding one failed S&L in Arkansas. Now, it knew
9 that there were two S&L institutions that had failed
10 in Arkansas on the same day, neither had been
11 investigated previously, so that wasn't an issue,
12 previous investigation was not an issue. What
13 factors would be looked at in determining which of
14 those two failed institutions became the subject of a
15 criminal investigation?

16 A Any -- you know, we're back to the same
17 point. Any information that would indicate to us
18 that there had been criminal activity. If we had no
19 information that there had been or had not been
20 criminal activity, that would be a very hard question
21 to answer.

22 Q So in other words, you would consider

1 available information about the failures of both
2 institutions and try to determine preliminarily which
3 institution appeared to have failed more as the
4 result of criminal activity?

5 A Yes.

6 Q And obviously you would focus your
7 resources on the institution that appeared to have
8 been failed by criminality?

9 A If we knew. See, the point that you're
10 making is that you're thinking that there's this
11 abundance of knowledge there that we know before we
12 look. That's the exception rather than the rule. We
13 usually don't know until we look.

14 Q Okay. I don't mean to be making any
15 assumptions. I just am asking questions. What else
16 would you -- what else would be looked at in deciding
17 which of those two institutions would get top
18 priority for a criminal investigation under those
19 circumstances?

20 A Oh, information, whether it came from any
21 work that the RTC or FDIC had done, any information
22 that the civil investigator might have picked up, any

1 information that's in the exams or any other criminal
2 referrals that might have happened to the institution
3 before it failed, just anything historical that would
4 indicate maybe we should look.

5 Q And as of late 1991 or early 1992, your
6 information in the Tulsa office about Madison was
7 that as far as anyone was aware, there was no
8 criminal -- there was no criminality related to the
9 failure of that bank that had not already been the
10 subject of criminal prosecutions; correct?

11 A Yes.

12 Q And as well as -- as far as you were aware,
13 you being the Tulsa office of the RTC, on relative
14 terms, that was a small -- it was a small bank
15 failure, wasn't it?

16 A Small savings and loan failure, yes.

17 Q Certainly significantly smaller than other
18 savings and loan failures in Arkansas; correct?

19 A Uh-huh.

20 MR. BOCOCC: Meaning yes?

21 THE WITNESS: Yes, yes.

22 MR. BARTOLOMUCCI: If you want to add

1 something, go ahead.

2 MR. BOCOCC: He would love for you to. Why
3 don't you not.

4 MR. KRAVITZ: I just don't want to be
5 accused of not giving him a chance to answer the
6 questions.

7 MR. BOCOCC: I've never seen such fairness.

8 MR. KRAVITZ: I appreciate that.

9 BY MR. KRAVITZ:

10 Q What involvement -- well, let me ask it
11 this way. Were you involved in any way in late
12 1991/early 1992 in determining a schedule for
13 criminal investigations of failed institutions in
14 Arkansas?

15 A Not directly, no. That would have been the
16 responsibility of the supervisory level, one step
17 below me.

18 Q And who was in that position?

19 A At that time I think Mike Van Valkenberg
20 was on the civil side and I think Clark Walton was on
21 the criminal side.

22 Q So it would have been Clark Walton who was

1 at the supervisory level that would have been
2 involved in setting the priorities for Arkansas
3 criminal investigations?

4 A Yeah, he would have worked that out. I
5 think he and Mike would have talked, but yeah, that
6 would have been who probably would have made the
7 decision. I'm just reflecting back on what our
8 organization was there and who was in place and I
9 think that's probably the way it would have been.

10 Q What involvement would Ms. Lewis have
11 had -- actually, let me say, what involvement did
12 Ms. Lewis have in the setting of the schedule for
13 criminal investigations of failed institutions in
14 Arkansas back in late 1991/early 1992?

15 A I think if there was some reason -- she
16 wouldn't have had very much input, but if there was
17 some reason she would have thought this institution
18 should have been worked before that one and she would
19 have stated, it would have been listened to and it's
20 not set in cement. It could have been changed.

21 Q So if Ms. Lewis would have had some reason
22 back in early 1992 to have Madison at or near the top

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1 of the list, of the scheduled list of criminal
2 investigations in Arkansas, she could have made those
3 reasons known to her supervisors?

4 A Yes.

5 Q And as far as you're aware of the way that
6 the -- that office in Tulsa worked, the supervisors
7 would have listened to Ms. Lewis?

8 A Yes, they would have.

9 Q And if they agreed with any reasons that
10 she had, she would have advanced the investigation of
11 Madison?

12 A Yes.

13 Q What involvement did the FBI field office
14 in Arkansas have in the setting of investigative
15 priorities as far as criminal investigations went for
16 Arkansas, failed Arkansas S&Ls?

17 A They didn't.

18 Q Your testimony is that the FBI Little Rock
19 field office had no input into the scheduling of RTC
20 criminal investigations of failed S&Ls in Arkansas
21 back in 1991/1992?

22 A We would set the priority. If for some

1 reason -- this is where this exchange of information
2 occurs. If for some reason an investigator says
3 well, the FBI is interested in this one, that might
4 have made a difference, okay, but as far as the FBI
5 being a viable entity in determining our priorities,
6 no. If there was some reason, something they were
7 interested in, they would tell us, we would listen,
8 okay, but to sit down and say they're going to help
9 us determine our priorities, no, I don't help them
10 determine their priorities and they don't help me
11 determine mine.

12 Q So it's certainly then the case that you
13 had no general practice in the Tulsa office of
14 consulting with the FBI Little Rock field office
15 before you set the schedule for criminal
16 investigations in Arkansas?

17 A That's correct.

18 Q Was the Tulsa RTC field office ever
19 notified by the FBI Little Rock field office that the
20 FBI Little Rock field office was particularly
21 interested in receiving criminal referrals in the
22 First Federal and Savers cases?

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1 A I am familiar with that Airtel because it
2 was given to us at the House hearing. That's the
3 first time that I saw that document.

4 Q Okay. And that's not -- my question was
5 not relating to a specific document. My question was
6 whether your office in Tulsa was ever notified by the
7 Little Rock field office of the FBI that the Little
8 Rock field office was most interested in receiving
9 criminal referrals in the First Federal and Savers
10 cases.

11 A To the best of my information, I don't
12 know. I don't think they did. They might have. I
13 don't know.

14 Q You're not aware of any notification from
15 the Little Rock field office of the FBI to the Tulsa
16 RTC field office indicating that it was the FBI's
17 hope and wish that they would receive prompt criminal
18 referrals on the Savers and First Federal cases?

19 A No. They might have asked which one are
20 you going to work next, what's your plan, so on and
21 so forth. That exchange of information could have
22 occurred, but I don't -- the question, to answer your

1 question specifically, no, I'm not aware of them
2 indicating a wish on our part to do this next.

3 Q As of early 1992, where were the First
4 Federal and Savers cases on the Tulsa priority list
5 for criminal investigations in Arkansas?

6 A One of those was worked '91, the last part
7 of '91, and I can't remember whether it was First
8 Federal or Savers, and the other one was worked
9 sometime thereafter, but I really don't remember.

10 Q Now, those were institutions that failed at
11 very high cost to taxpayers; correct?

12 A I don't know.

13 Q Several hundred million dollars in each
14 case?

15 A That was the -- we don't know how much they
16 cost the taxpayer. You can't state that on the basis
17 of their size. You don't know until after you go
18 through your process. And I don't know -- I know
19 what the footings were, that's what you're talking
20 about, size of the institution when it failed. How
21 much loss was caused you don't know until way, way,
22 way down the line. And I have no idea how much loss

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1 there was in those two institutions.

2 Q Who in your office in Tulsa was in contact
3 with people from the Little Rock field office of the
4 FBI regarding your investigative priorities back in
5 that time period, 1991/1992?

6 A Oh, it could have been anyone who talked
7 with them. It could have been Clark Walton, could
8 have been Jean Lewis, it could have been a number of
9 people.

10 Q I mean was there any -- were you kept
11 informed by your subordinates of communications that
12 they had with members of the FBI field offices within
13 your jurisdictions?

14 A Not every single phone call they had, no.

15 Q But as a general matter?

16 A If it was something that was something that
17 they thought I should know about, I was told. During
18 this time period you're talking about, from about the
19 middle of January until I think the first of April --

20 Q What year?

21 A '92, I was not in Tulsa, I was detailed to
22 Baton Rouge, so I was there, you know, maybe a day or

1 two a month or so, and got caught up on what was
2 going on, but, you know, if there was something
3 critical, they would let me know.

4 Q Were you in the Tulsa office through the
5 end of 1991?

6 A Yes.

7 Q And actually, what did you just say, if
8 something was happening, they would let you know?

9 A Yes.

10 Q So even while you were in Baton Rouge, it's
11 your testimony that if the FBI had made requests of
12 Ms. Lewis or Mr. Walton for referrals in the First
13 Federal and Savers cases, you think you would have
14 been notified of that, even while you were in Baton
15 Rouge?

16 A Yeah, if they thought it was a critical --
17 something that I should know about, they would have
18 told me that, yes.

19 Q So am I correct, then, that as of the time
20 of the Jeff Gerth article in the New York Times,
21 March 8, 1992, you were not stationed in the Tulsa
22 field office?

1 A I was stationed there. I just wasn't
2 there, I was on a detail at Baton Rouge, yes. I'm
3 there, but I'm not there.

4 Q Let's not get hung up on the word
5 "stationed." You were full-time on detail in Baton
6 Rouge?

7 A Yes.

8 Q And you went back to Tulsa once or twice a
9 month, you said?

10 A Yeah.

11 Q For what purpose?

12 A Oh, to sign any documents that I had to
13 sign, to keep up to speed with what was going on, you
14 know, just to try to keep abreast of what was
15 happening.

16 Q What was the purpose of your detail to
17 Baton Rouge?

18 A The director -- the assistant director for
19 investigations had taken a job in Washington, D.C.
20 and they needed someone to run that office until the
21 new director was hired.

22 Q And you were there from sometime in

1 January?

2 A End of January until early April.

3 Q Were you in the Tulsa field office on March
4 8, 1992, the day that the article appeared?

5 A I don't think so.

6 Q Were you in the Tulsa field office on any
7 day in March after March 8, 1992?

8 MR. BOCOCK: If you remember.

9 THE WITNESS: I don't remember.

10 BY MR. KRAVITZ:

11 Q Do you think you were?

12 A Yeah, I probably was in one or two days
13 that month, so yeah.

14 Q Now, you've testified previously about two
15 independent requests that came to the Tulsa office
16 from elsewhere in the RTC for information or some
17 kind of investigation about Madison. Were you
18 present when either of those requests came into the
19 Tulsa field office?

20 A I don't think so.

21 Q Who told you about these requests?

22 A I think Mike Van Valkenberg told me.

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1 Q Again, he was the criminal supervisor
2 between you and --

3 A No, he was the civil supervisor, but he was
4 the ranking person underneath me.

5 Q And I'm sorry, it was Clark Walton who was
6 the criminal supervisor?

7 A Yes.

8 Q Van Valkenberg was higher up than Walton?

9 A Yes. Van Valkenberg was in charge of the
10 office while I was gone.

11 Q What did Mr. Van Valkenberg tell you about
12 these requests?

13 A Not very much, that there were something --
14 something about a newspaper article and we needed to
15 see if there was anything there, something to that
16 effect.

17 Q Now, there were two separate requests, is
18 that your testimony?

19 A Yes.

20 Q What were the two requests and who were
21 they from?

22 A One of the requests was from Washington to

- 1 Kansas City to us in the investigative chain, okay.
2 Q Where did that initiate?
3 A In Washington.
4 Q From who?
5 A Jim Dudine's office. Not Jim Dudine. I
6 think it was John -- I can't remember John's last
7 name, but in Dudine's office.
8 Q It was someone in Mr. Dudine's office named
9 John?
10 A Yes.
11 Q Was it someone -- so it was someone who
12 worked for Mr. Dudine?
13 A Yes.
14 Q Was it your understanding that Mr. Dudine
15 had approved this request that was initiated by this
16 person named John?
17 A I don't know if he did or he didn't. This
18 wasn't unusual to get a call, it would come down the
19 ladder, would you please see if there's anything of
20 interest here to the RTC, does this mean anything to
21 the RTC. You would get those kind of calls
22 periodically.
-

- 1 Q Why did the call initially go to Kansas
2 City, if you know?
3 A That was the regional office that we --
4 that Tulsa reported to, so that would be the first
5 step, and then it went from Kansas City down to
6 Tulsa.
7 Q Who in Kansas City received a call from
8 John?
9 A I think it was John McKinney. No, not John
10 McKinney. Last name is McKinney. Jack McKinney?
11 Last name is McKinney.
12 Q Who is he?
13 A He was I think the criminal coordinator for
14 the Kansas City office.
15 Q And who did Mr. McKinney call in Tulsa?
16 A I think he called Mike.
17 Q Mike Van Valkenberg?
18 A Yes.
19 Q And then when did this happen, by the way?
20 How soon after March 8, 1992 did this request come
21 from Washington via Kansas City?
22 A I think within a day or two. It was very

- 1 quickly after the newspaper article.
2 Q And when did you learn about it for the
3 first time?
4 A Sometime thereafter. How long, I don't
5 really know.
6 Q Did you get a call from Mr. Van Valkenberg
7 down in Baton Rouge?
8 A I don't remember.
9 Q You don't remember?
10 A No. I was notified, but I don't remember
11 if it's when I was back in Tulsa or if I got a call.
12 I don't remember.
13 Q Now, what did Mr. Van Valkenberg tell you
14 he had been asked to do?
15 A I really -- specifically, I don't recall,
16 but it would be something to the effect to verify if
17 there was any truth to the newspaper story.
18 Q Something as simple as that?
19 A Yeah.
20 Q So -- and was this -- I take it this was an
21 oral, verbal request as opposed to a written request?
22 A Yes.
-

- 1 Q This is the request from Washington via
2 Kansas City?
3 A Right.
4 Q It was never written, as far as you know?
5 A I don't think so.
6 Q And your understanding of the request as it
7 was received by Mr. Van Valkenberg was simply to find
8 out whether there was any truth to Mr. Gerth's
9 newspaper story?
10 A Yes.
11 Q So the request was certainly not a
12 directive from Washington to open a significant
13 criminal investigation of the Madison case and to
14 advance its -- the time for a follow-up criminal
15 investigation that was currently scheduled for late
16 in 1992, was it?
17 A Not at that time, no.
18 Q Okay. What was the request -- well, you
19 also testified that there was a second independent
20 request that came into the Tulsa field office
21 following Mr. Gerth's article?
22 A Virginia Lewis, who was the site director,

1 and I don't know --

2 Q I'm sorry. What was her position?

3 A Virginia Lewis, she was the director of the
4 office.

5 Q In Tulsa?

6 A Yes. And I don't know if -- I don't know
7 how she became aware of the situation, but about the
8 same time that it comes down from Washington to
9 Kansas City, she wanted to know if there was any
10 truth to the story, also.

11 Q Now, who did Ms. Lewis tell that she wanted
12 to know whether there was any truth to the story?

13 A I think that was probably Mike
14 Van Valkenberg, too.

15 Q And you heard about Virginia Lewis's
16 question to Mr. Van Valkenberg from
17 Mr. Van Valkenberg?

18 A Yeah, as I recall.

19 Q And as far as you're aware, did the request
20 that came from Washington via Kansas City to Tulsa
21 arrive at approximately the same time that Virginia
22 Lewis made her request of Mr. Van Valkenberg?

1 A I think they were fairly close.

2 Q And your understanding of the two requests
3 is that they were of a similar nature?

4 A Yes.

5 Q Both were just simply to find out whether
6 there was any truth to Mr. Gerth's newspaper article?

7 A Yes.

8 Q Neither was a request or directive to open
9 a significant criminal investigation of Madison?

10 A That's true.

11 Q And certainly neither was a request or
12 directive to advance the current schedule for the
13 criminal investigation of Madison from late 1992 to
14 some earlier date; correct?

15 A Correct.

16 Q What's your understanding as to how it came
17 about that the Madison -- the criminal investigation
18 in Madison was advanced from later in 1992 when it
19 was scheduled to an earlier time period in 1992?

20 A A trip was made to Little Rock to a
21 warehouse and documents were reviewed and information
22 was seen that suggested that the investigation should

1 be moved up.

2 Q Who directed that this trip to Little Rock
3 be made?

4 A I don't remember. Could have been -- I
5 don't think I was back yet. It probably was Mike,
6 but you know, I'm just surmising it was probably
7 Mike.

8 Q Have you ever discussed -- this is Mike
9 Van Valkenberg?

10 A Yes.

11 Q Did you ever discuss with
12 Mr. Van Valkenberg why he might have directed that a
13 trip be made to Little Rock to look at those
14 documents?

15 A No. That would have been a very logical
16 thing to do.

17 Q Why is that?

18 A Because it's the only way we could -- based
19 on the earlier questions, the only way we generally
20 can determine if there's any criminal activity is we
21 have to review the documents, so the way we would
22 determine if there was criminal activity would be go

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1 look at the documents.

2 Q And it's your view that a determination of
3 whether there was criminal activity was something
4 that needed to be done in order to find out if there
5 was any truth to the newspaper article?

6 A It's the only way we could clarify it.

7 Q What happened after this trip to Little
8 Rock to review documents that resulted in the
9 criminal investigation of Madison being advanced in
10 time?

11 A I'm not real sure on the timing, but they
12 went over and they looked -- I think it was Jean and
13 Wyatt, I think they went together. They went over
14 and they looked.

15 Q This is Jean Lewis and Wyatt Adams?

16 A Adams, yes. They went over and looked and
17 they came back, and I think they brought some
18 documents with them, okay. And I think this is in
19 March or early April, but somewhere within a
20 reasonable time span.

21 Q 1992?

22 A Yes. Then we went through another

1 reorganization, okay, so we had to stop our work in
2 Tulsa, load up everything and send it to Kansas
3 City. We all -- all of us who wanted to go to Kansas
4 City had to apply for the jobs and see if we would be
5 hired. That happened. We relocated, got settled,
6 opened up the new office, unpacked the records and
7 started investigating again, so that's the reason
8 nothing much happens between April and July.

9 Q Now, as of the time that you left the Tulsa
10 office, Ms. Lewis was still assigned -- was the
11 person assigned to the criminal investigations of all
12 the failed institutions in Arkansas; correct?

13 A I think so, yes.

14 Q And when you went to -- when you and
15 Ms. Lewis both moved to the Kansas City office in the
16 summer of 1992, that was still the case; correct?

17 A No. When we got there, when we -- I don't
18 remember if it was Jean decided early on she was
19 going to go to Tulsa -- I mean going to go to Kansas
20 City or not. I don't remember what her decision was,
21 but I do know that she arrived in Kansas City. We --
22 when we arrived in Kansas City, in addition to Tulsa

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1 moving to Kansas City, Minneapolis moving to Kansas
2 City, another Kansas City office moved to Kansas City
3 and we still had Chicago, okay. So --

4 Q What do you mean you still had Chicago?

5 A Well, there was still an office in Chicago
6 that we were now responsible for too.

7 Q I don't understand. What do you mean were
8 still --

9 A An investigative office in Chicago.

10 Q That who was responsible for?

11 A Investigations. We had another
12 investigative office in Chicago. The other offices
13 had been consolidated and moved to Tulsa, and there
14 was another office that had not been consolidated
15 that was still in Chicago.

16 Q Well, what was your responsibility with
17 regard to the Chicago office?

18 A That office reported to me.

19 Q Okay.

20 A So we just couldn't take Tulsa and just,
21 boom, set it in Kansas City and start up again. We
22 had to do some reorganization, put people in

1 different places. That took more time. And Jean had
2 more than Arkansas. She had Illinois --

3 MR. BOCOCK: Are you talking about
4 post-reorganization?

5 THE WITNESS: Post-reorganization.

6 BY MR. KRAVITZ:

7 Q This is after you moved to Kansas City,
8 Ms. Lewis had Arkansas, Illinois --

9 A And I think maybe Ohio, but she had more.

10 Q The office in Chicago didn't have Illinois?

11 A Didn't have all of it. I forgot -- it
12 depends on how the other consolidated offices had
13 things cut up, okay.

14 Q Let me ask you this --

15 A Maybe she had Indiana, I don't know.

16 Q When you moved from Tulsa to Kansas City in
17 the summer of 1992, did Ms. Lewis keep her assignment
18 to the failed institutions in Arkansas? Those
19 weren't taken away from her, were they?

20 A They were reassigned to her after she
21 got --

22 Q And she got additional institutions as

1 well?

2 A Yes.

3 Q So Ms. Lewis's caseload grew as a result of
4 the move from Tulsa to Kansas City?

5 A Yes.

6 Q Why was it that the Madison criminal
7 investigation was advanced so that it occurred before
8 the criminal investigations of other failed
9 institutions in Arkansas that had been scheduled to
10 occur before the Madison investigation?

11 A Because of the evidence that they found in
12 Little Rock.

13 Q And what was it about that evidence that
14 made -- well, strike that.

15 Who made that decision to advance the
16 Madison investigation?

17 A I think that was sort of a joint decision,
18 and I'm probably the one that said fine, move it up.

19 Q Joint decision made among -- by who?

20 A We would have talked with the investigator
21 and with the department head and, you know, we would
22 have received a lot of input, but it's my decision to

1 make.

2 Q Do you remember making the decision to
3 advance the criminal investigation of the Madison
4 case and to leapfrog it ahead of other criminal
5 investigations that had been scheduled to be
6 conducted before the Madison investigation?

7 A Yeah, I recall it, yes.

8 Q When did you make that decision?

9 A April, end of April, somewhere in April.

10 Q Is that before or after the move to Kansas
11 City?

12 A No, that was before we knew we were moving.

13 Q Oh, okay. So that decision was made in
14 Tulsa?

15 A Yes.

16 Q And was the decision made to conduct the
17 Madison criminal investigation as soon as possible?

18 A Yes.

19 Q In other words, you would have done it
20 immediately had the move not come about?

21 A Yes.

22 Q What was it about the information that was

1 discovered in Little Rock that made the Madison
2 criminal investigation of higher priority to you than
3 the other criminal investigations that had been
4 scheduled to occur before the Madison criminal
5 investigation, such as the First Federal or the
6 Savers investigations?

7 A There was nothing tangible in that criminal
8 investigation that made it any better than any of the
9 others. The fact that there was publicity and
10 Washington wanted us to do something on it were
11 determining factors.

12 Q But you've testified previously that the
13 request from Washington was not a request or
14 directive either to conduct a significant criminal
15 investigation or to advance the criminal
16 investigation that at that time was scheduled to
17 begin late in 1992; correct?

18 A Yes. Initially --

19 Q So I guess I don't understand your answer.

20 A Initially, they asked us to go look. After
21 we looked and we told them what we found, then that's
22 a different situation.

1 Q Oh. Well, were there further
2 communications from Washington after you reported on
3 what was found in Little Rock?

4 A Yes.

5 Q Tell us about those.

6 A Well, up through Kansas City and on up. I
7 think as I recall we briefly laid out the
8 documentation that we had found and that we were
9 going to go ahead and proceed, and, you know, it was
10 not a big deal.

11 Q Who briefly laid out what to whom and when?

12 A It's going to be in that time span, end of
13 March, early April.

14 Q This is when Ms. Lewis and Mr. Adams have
15 returned from Little Rock?

16 A Yes.

17 Q To Tulsa?

18 A And I can't remember if we talked to John
19 McKinney, then talked to the other John in
20 Washington, or talked to Dudine. I really don't
21 remember who we talked to, but I know we did the
22 communication thing.

1 Q Were memos written summarizing information
2 that had been obtained in the Little Rock warehouse?

3 A There might have been a few memos. I
4 really don't remember.

5 Q Memos that would have been sent to the
6 Kansas City and/or the Washington office?

7 A Possibly, yes.

8 Q Whose decision -- was it your decision to
9 advance the Madison investigation as opposed to
10 Washington's or Kansas City's decision?

11 A Well, I think I told them this is what I
12 was going to do and they didn't object to it. It
13 seemed a logical thing to do, so we proceeded.

14 Q Did you discuss the advancement of the
15 Madison criminal investigation with Mr. Dudine before
16 you made that decision?

17 A Possibly. I just don't remember.

18 Q You have no memory of discussing it?

19 A No.

20 Q Is it fair to say, then, that you have no
21 memory of asking Mr. Dudine's permission or approval
22 for advancing the Madison criminal investigation?

1 A My memory tells me that nobody told me no,
2 okay.

3 Q That wasn't my question. My question was,
4 do you have any memory of asking for Mr. Dudine's
5 approval or permission to advance the investigation
6 of the criminal referral? I'm sorry, the criminal
7 investigation of Madison.

8 A No, not really. I think I advised him, but
9 that was my decision to make.

10 Q So now you remember that you did advise
11 him?

12 A I think I did. I said I think maybe I
13 advised him, but I don't really recall.

14 Q Do you have any recollection of having any
15 direct contact with anyone in Mr. Dudine's office
16 between the time that Ms. Lewis and Mr. Adams
17 returned from Little Rock to Tulsa and the time that
18 you made the decision to advance the criminal
19 investigation of Madison?

20 MR. BOCK: Your question is compound. Do
21 you mean does he remember specifically?

22 MR. KRAVITZ: It's not compound.

1 MR. BOCK: Do you mean do you remember
2 having a specific conversation?

3 MR. KRAVITZ: I'm asking him if he had any
4 contact with anyone in Mr. Dudine's office during
5 that time period.

6 THE WITNESS: I don't remember
7 specifically. I think I did, but I don't remember.

8 BY MR. KRAVITZ:

9 Q Did anyone else from your office, including
10 Ms. Lewis and Mr. Van Valkenberg, have any contact
11 with anyone in Mr. Dudine's office about the issue of
12 advancing the criminal investigation in the Madison
13 case between the time of Ms. Lewis's and Mr. Adams's
14 return to the Tulsa office from Little Rock and the
15 time that you decided to advance the investigation?

16 A I don't think so.

17 Q So if anyone had contact with someone in
18 Mr. Dudine's office, it would have been you?

19 A Probably, yes.

20 Q Did you have any contact during that time
21 period with anyone in the Kansas City RTC field
22 office regarding the question of whether the Madison

1 criminal investigation should be advanced in time?

2 A Yes, I think I did. I would have either
3 talked to John McKinney or Bob Ashbacher.

4 Q Who is Bob Ashbacher?

5 A He was the regional investigative head in
6 Kansas City.

7 Q Now, did you report to either of those two
8 men?

9 A At this point in time, it was dotted line.
10 That was not my direct line.

11 Q Your direct line was to Mr. Dudine?

12 A No, my direct line was to Ms. Lewis.

13 Q Virginia Lewis?

14 A Yes.

15 Q What was your nature of reporting to
16 Mr. Dudine, if any?

17 A Well, he was the director of the
18 investigative function, and there was a dotted line
19 that went all the way up that just -- you know, it
20 just worked that way.

21 Q Did you have any discussion with Virginia
22 Lewis about advancing the criminal investigation in

1 the Madison case before you made that decision?

2 A No, I don't recall that.

3 Q Is there any reason why you wouldn't have
4 discussed that with Virginia Lewis, your direct
5 supervisor?

6 A She didn't provide much input into the
7 investigative decision. She wanted to be advised,
8 but she pretty much let you manage your own
9 operation.

10 Q Well, she was the source of one of the
11 requests for information about the case after the
12 Gerth article appeared, wasn't she?

13 A Yes, initially.

14 Q You knew this was an issue that
15 Ms. Virginia Lewis was interested in?

16 A Yes.

17 Q But you chose not to ask her whether she
18 thought it was a good idea to advance the criminal
19 investigation in the Madison case?

20 A Yes. I think the unusual reporting
21 relationship, the dotted line and direct line, was
22 kind of confusing. She wanted to be kept advised,

1 but, you know, she really made very few decisions
2 with regard to the direction and the decisions of
3 investigations made.

4 Q What was confusing about the reporting
5 requirement?

6 A Well, I thought maybe it was confusing to
7 you because it was a direct line to her, but we were
8 talking to Kansas City and talking to Washington.

9 Q But you had no confusion about the fact
10 that you were to report directly to Virginia Lewis;
11 correct?

12 A Yes. I had no problems with that.

13 Q And you had no confusion as of the spring
14 of 1992 that Virginia Lewis was one of the two
15 sources of inquiry about the Madison case in the wake
16 of the Gerth article?

17 A Yes.

18 MR. BOCK: Can we take a break for just a
19 second?

20 MR. KRAVITZ: Sure.

21 (Recess.)

22 MR. KRAVITZ: Back on the record.

1 I'm becoming more and more confident that
2 we will finish.

3 BY MR. KRAVITZ:

4 Q Mr. Iorio, did you attend an RTC training
5 conference in Washington, D.C. on January 14 and 15,
6 1993 entitled "The National Criminal Coordinator
7 Conference"?

8 A I don't think so.

9 Q To your knowledge, did anyone from the
10 Kansas City RTC field office attend that conference?

11 A I would think that Lee Ausen did, from
12 investigations. He attended those meetings.

13 Q Do you remember -- well, when you say he
14 attended, Mr. Ausen attended those meetings, what
15 meetings are you referring to?

16 A Criminal coordinator meetings.

17 Q Were these meetings that occurred on a
18 regular basis?

19 A Usually once a year, I think.

20 Q So once every year, there would be a
21 national meeting of criminal coordinators from all of
22 the RTC field offices?

1 A Yes.

2 Q Was Lee Ausen the criminal coordinator of
3 the RTC Kansas City office as of January of 1993?

4 A Yes, for investigations. There would have
5 been a counterpart on the PLS side, legal side.

6 Q Do you have a specific recollection of
7 Mr. Ausen attending the conference in Washington,
8 D.C. January 14, 15, 1993?

9 A I think he attended. He always went to
10 those meetings and I don't remember him not going, so
11 I think he did.

12 Q And did Ms. Lewis also attend the meeting
13 in Washington, D.C. January 14 and 15, 1993?

14 A I do not know.

15 Q I'm going to show you a sign-in sheet from
16 that meeting which has both Mr. Ausen's and
17 Ms. Lewis's name and signatures on it and just see if
18 it refreshes your memory as to whether Ms. Lewis also
19 attended.

20 MR. BARTOLOMUCCI: Is that Bates numbered?

21 MR. KRAVITZ: It is and I'm just about to
22 get to that.

1 BY MR. KRAVITZ:

2 Q As to whether Ms. Lewis also attended the
3 RTC criminal coordinators conference in Washington on
4 January 14 and 15, 1993. And the page that I'm going
5 to direct your attention to is page CG 0034, the
6 final page of a multiple-page document that begins on
7 page CG 0027. I'm going to ask you to look at
8 CG 0034 to see where Ms. Lewis signed in, and I also
9 would like to direct your attention to page CG 0032,
10 which indicates that Ms. Lewis was a panelist in a
11 panel discussion from 4:15 to 5:30 p.m. on the first
12 day of this conference. That would be January 14,
13 1993. I'll leave it open like this.

14 MR. BOCOCK: You're showing him this to
15 refresh his recollection or are you just showing him
16 to prove that you have some extrinsic proof that
17 these people were there?

18 MR. KRAVITZ: I'm showing it to him to ask
19 him if it refreshes his memory.

20 MR. BOCOCK: Have you ever seen this
21 before?

22 THE WITNESS: Maybe.

1 MR. BOCK: Okay. Fair question, then.
2 She was on a panel? Oh, okay, okay.

3 MR. BOCK: The question is does that
4 refresh your recollection about anything? Is
5 something you didn't remember now made alive by
6 reading that?

7 THE WITNESS: No.

8 BY MR. KRAVITZ:

9 Q So your testimony is that looking at these
10 two documents does not refresh your memory as to
11 whether Ms. Lewis attended the conference in
12 Washington, D.C. on January 14 and 15, 1993?

13 A Well, it looks like she did because --

14 MR. BOCK: Right, but he's not asking
15 whether she did. He's asking whether your memory is
16 refreshed.

17 THE WITNESS: No, not really.

18 BY MR. KRAVITZ:

19 Q Now, you've testified that Mr. Ausen
20 regularly attended these annual national criminal
21 coordinators conferences; correct?

22 A Yes.

1 Q Did Ms. Lewis regularly attend national
2 criminal coordinators conferences?

3 A No.

4 Q So it would have been unusual for Ms. Lewis
5 to attend?

6 A Yes. There's other signatures there for
7 Kansas City people, so --

8 Q Who is that?

9 A Mike Caren is on there and a number of
10 other people, so maybe it was an expanded meeting,
11 but I really don't remember.

12 Q Why don't you -- well, let me give this
13 back to you, and why don't you tell us which of the
14 people on this list, CG 0034, are from the Kansas
15 City office.

16 A Okay. Lee Ausen is, Michael Caren, Jean
17 Lewis, Richard Parks. I think that's it.

18 Q Now, what does that document indicate
19 Ms. Lewis's title to be?

20 A It doesn't say.

21 Q Doesn't it indicate that she's a criminal
22 coordinator?

- 1 A Ms. Lewis?
- 2 Q Yes.
- 3 A No.
- 4 Q Oh, okay. Please check the program page.
- 5 A Discussion -- oh, Jean Lewis, criminal
- 6 coordinator, Kansas City.
- 7 Q Is that an accurate --
- 8 A That's inaccurate, yes.
- 9 Q That is inaccurate?
- 10 A Yes.
- 11 Q So how many members from the Kansas City
- 12 investigations unit appear to have been at this
- 13 conference?
- 14 A It looks like four.
- 15 Q Do you have any recollection of any of
- 16 those individuals other than Mr. Ausen attending the
- 17 conference in Washington, D.C. in mid-January 1993?
- 18 A No.
- 19 Q What's your understanding of the purpose of
- 20 the conference that was held in Washington, D.C. in
- 21 mid-January 1993 for criminal coordinators?
- 22 A I would imagine it would be to discuss the

- 1 criminal coordinator program.
- 2 Q What's the criminal coordinator program?
- 3 A Oh, it's a designation within RTC, within
- 4 investigations and within legal as to people that
- 5 have responsibility for the criminal investigative
- 6 effort. It sets forth duties and responsibilities
- 7 for those involved.
- 8 Q And is it a program, at least as far as you
- 9 know, that exists to promote cooperation and
- 10 collaboration among the various components of the RTC
- 11 that all work on criminal matters?
- 12 A Yes.
- 13 Q And the various components within the RTC
- 14 that work on matters that have any relation to
- 15 criminal investigations?
- 16 A Yes.
- 17 Q Did you speak with Mr. Ausen after his
- 18 return from the mid-January 1993 criminal
- 19 coordinators conference about what had been discussed
- 20 at the conference?
- 21 A I really don't remember.
- 22 Q Did you speak with anyone from your office

1 who attended the criminal coordinators conference in
2 mid-January 1993 about what had been discussed at the
3 conference?

4 A I don't remember.

5 Q Did you discuss with anyone, whether they
6 were from your office or not, who attended the
7 criminal coordinators conference in mid-January 1993
8 about what had been discussed at the conference?

9 A I don't remember that, either. The RTC has
10 an awfully lot of meetings, so, you know.

11 Q Is your point that this -- that nothing
12 stands out in your mind about this conference?

13 A Yes.

14 Q As of mid-January 1993, did the PLS in the
15 Kansas City field office of the RTC have any role in
16 the preparation of criminal referrals prior to their
17 submission to the Department of Justice?

18 A To the best of my recollection, no.

19 Q At that time PLS would get a copy, a
20 courtesy copy or information copy, of a criminal
21 referral within a few days of the referral's
22 submission to the Justice Department?

1 A Yes.

2 Q And by within a few days, what you mean is
3 within a few days after the submission of the
4 referral to the criminal -- to the Justice
5 Department; correct?

6 A Yes.

7 Q Never before the submission of the criminal
8 referral to the Justice Department?

9 A That's -- yes, that's correct.

10 Q Now I want to focus your attention on the
11 time period beginning on January 15, 1993 and ending
12 on June 17, 1993. And just to make sure that I'm not
13 being mysterious, January 15, 1993 is the last day of
14 this criminal coordinators conference that we've just
15 been talking about. June 17, 1993 is the day that
16 the policy directive relating to the legal critique
17 or legal review of criminal referrals was issued. Do
18 you understand the period of time that I'm talking
19 about?

20 A Uh-huh.

21 Q Yes?

22 A Yes.

1 Q During that time period, January 15 to --
2 A Just because it's dated June 17, 1993
3 doesn't mean that's when we received it.
4 Q When did you receive the June 17 policy
5 directive?
6 A It would have been sometime thereafter, but
7 I don't know when.
8 Q Was it within a few days?
9 A No, usually like maybe a month later.
10 Q How did they come from Washington to Kansas
11 City?
12 A In the mail.
13 Q And your testimony is that it takes a
14 month?
15 A Depending on what else is in the hopper to
16 get all printed up and sent out. Sometimes we don't
17 get them until quite a bit later, yes.
18 Q When did you get the June 17, 1993 policy
19 directive relating to PLS involvement in criminal
20 referrals?
21 MR. BOCK: If you know.
22 THE WITNESS: I don't really remember

1 precisely.
2 BY MR. KRAVITZ:
3 Q Do you remember a month delay between June
4 17 and your receipt of that policy directive?
5 A In other documents of a similar nature,
6 yes.
7 Q That wasn't my question.
8 A I can't answer because I don't remember
9 specifically this document.
10 Q So you don't remember any one-month delay
11 in your receipt of the June 17, 1993 policy
12 directive, do you?
13 A Not specifically, that's correct.
14 Q Do you remember any delay in your receipt
15 of that document?
16 A Well, I know I didn't get it on June 17
17 because that's my birthday, and I know I didn't get
18 it that day, okay.
19 Q Didn't ruin your birthday?
20 A Huh-uh.
21 Q Between January 15, 1993 and June 17, 1993,
22 did the RTC field office in Kansas City submit any

1 criminal referrals in any case to the Department of
2 Justice?

3 A Yes, I think we did.

4 Q How many -- in how many cases?

5 A I don't remember.

6 Q Was Ms. Lewis involved in the preparation
7 of any of the referrals, criminal referrals, that
8 were made to the Department of Justice between
9 January 15 and June 17, 1993?

10 A I don't know.

11 Q Do you remember what institutions were
12 involved?

13 A No.

14 Q Is there any documents that you know of
15 that would refresh your memory on that?

16 A Yes. We prepared a document for the House
17 that showed by state, by date, by investigator all
18 the referrals that were done for I think a two- or
19 three-year period. That document is available.

20 Q But your memory -- and I apologize, I wish
21 I had that document here, suppose it's possible that
22 I do, I just don't know I have it, but I don't think

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1 I have it. But your memory is that during that
2 approximately five-month period, mid-January to
3 mid-June 1993, the Kansas City field office did make
4 criminal referrals in cases other than Madison,
5 obviously, to the Department of Justice?

6 A Yes, I think so, yes.

7 Q And did you as the director of the Office
8 of Investigations sign all of those criminal
9 referrals that were made during that time period?

10 A Yes.

11 Q And all of those referrals, I take it, were
12 prepared by investigators working under your
13 supervision?

14 A No, they worked under Mr. Ausen's
15 supervision.

16 Q Okay. And all of those referrals that were
17 made between mid-January and mid-June 1993 were
18 drafted or prepared by criminal investigators working
19 under Mr. Ausen's supervision?

20 A Yes.

21 Q And then you reviewed all of those criminal
22 referrals and approved and signed them before they

1 were actually made to the Department of Justice?

2 A For -- yes, before they were sent out.

3 Q During that five-month period, mid-January
4 to mid-June 1993, did Mr. Ausen say anything to you
5 about whether any lawyers from PLS should be shown
6 any of those criminal referrals before they were
7 actually submitted to the Department of Justice?

8 A I don't remember that.

9 Q Do you remember any discussions anywhere
10 within the Kansas City field office during that
11 five-month period, mid-January to mid-June 1993,
12 about whether criminal referrals should be shown to
13 PLS attorneys, legal division attorneys, prior to the
14 referral's submission to the Department of Justice?

15 A I don't remember a conversation like that.

16 Q Is that something that you think you would
17 remember had it happened?

18 A I don't know.

19 Q But you certainly have -- you don't
20 remember this being an issue that was on the table
21 with regard to the criminal referrals that you signed
22 between mid-January and mid-June 1993?

1 A What I remember, and I can't give you the
2 time, okay, is when PLS designated I think Karen
3 Carmichael to be the legal coordinator --

4 Q Wait a minute.

5 A And I don't know, that would be after July
6 of '92, okay, but they wanted copies of everything,
7 so we made copies of every single referral and
8 everything and got them over to them so that they
9 could be up to speed. And then we, as we sent them
10 out, we would provide them a copy. So that's really
11 the only thing I remember.

12 Q Can you place that event in time as either
13 being before or after this criminal coordinators
14 conference that occurred in mid-January 1993?

15 A No, not really. I would guess -- I don't
16 know. I don't know.

17 Q You just don't know?

18 A Yeah.

19 Q But whenever that was that Ms. Carmichael
20 was identified as the criminal coordinator on the
21 legal side, your office provided legal division with
22 copies of all of the past criminal referrals at one

1 point?

2 A Yes.

3 Q And then on a going-forward basis provided
4 legal division with copies of all criminal referrals
5 after they went out?

6 A Yes.

7 Q And so again, up through June 17, 1993, the
8 Office of Investigations policy of simply giving the
9 legal division a courtesy copy within a few days of a
10 referral's submission remained the same?

11 A Yes, that was sort of -- that was a local
12 policy on our part.

13 Q Were you aware at any time during that
14 five-month period, mid-January to mid-June, that it
15 was the desire of senior officials at RTC Washington
16 that legal division attorneys review criminal
17 referrals before their submission to the Department
18 of Justice?

19 A No.

20 Q No one ever made that -- made you aware of
21 that?

22 A No.

1 Q No one ever even discussed with you the
2 issue of legal division review of criminal referrals
3 before their submission during that five-month time
4 period?

5 A No, I don't remember that.

6 Q When officials of the Kansas City office
7 went to national conferences, national training
8 conferences of the RTC, did they ordinarily prepare
9 memos or provide any kind of presentation to the rest
10 of the investigation staff upon their return?

11 A They would to the other criminal
12 investigators in their department staff meetings.

13 Q And was that something that was done on a
14 regular basis?

15 A Yes.

16 Q In other words, whenever a criminal
17 investigator was sent to a national RTC training
18 conference, that criminal investigator would be
19 required upon his or her return to give some kind of
20 a briefing or write a memo to the other criminal
21 investigators to share the information learned at the
22 conference?

1 A What they would do is they would usually
2 bring back the handouts and make copies for everybody
3 and give them to them and then answer any questions.

4 Q Would there be a special staff meeting of
5 all the criminal coordinators to achieve that
6 purpose?

7 A No, there's only one criminal coordinator
8 on our side and that would have been Lee Ausen.

9 Q I'm sorry. I meant of all the criminal
10 investigators.

11 A They meet weekly. He has weekly staff
12 meetings so he would have had plenty of opportunity
13 in a timely manner to do that.

14 Q So it's your assumption -- well, strike
15 that.

16 Do you attend the weekly -- back in 1993,
17 did you attend the weekly staff meetings of the
18 criminal investigators in the Kansas City office?

19 A No, I did not.

20 Q But it's -- you know that in January of
21 1993, weekly staff meetings were being held under
22 Mr. Ausen's direction?

1 A Yes.

2 Q And Ms. Lewis would have attended those
3 meetings?

4 A Yes.

5 Q And it's your expectation, then, that
6 following Mr. Ausen's and Ms. Lewis's return from the
7 January 14 and 15 national conference in Washington,
8 that one or both of them would have provided
9 information about the conference to the other
10 criminal coordinators at one or more of these staff
11 meetings?

12 A Other criminal investigators.

13 Q Thank you. The answer is yes?

14 A Yes, they would have.

15 Q That's something that would have happened?

16 A It's standard.

17 Q Mr. Iorio, I'm going to give you a copy of
18 the June 17 policy directive. It's a memorandum to
19 "all RTC investigations department heads (field
20 sites), all investigation staff (Washington), all
21 assistant general counsel (field sites), all
22 litigation professional liability and complex

1 litigation section chiefs (field sites) and all
2 litigation professional liability and complex
3 litigation attorneys (Washington)" from Mr. Dudine,
4 Mr. Hindes and Mr. Barker and Mr. Patchan,
5 P-a-t-c-h-a-n?

6 A Patchan, I think that's correct.

7 Q Subject is criminal referrals. And
8 unfortunately the copy I have does not have Bates
9 stamp numbers on it, but that's why I was being so
10 inclusive as to what this is all about.

11 Mr. Iorio, have you seen that document or
12 another copy of that document before?

13 A Yes, I have.

14 Q What is that?

15 A It's a policy and procedure document with
16 regard to criminal referrals.

17 Q And it's dated June 17, 1993?

18 A Yes.

19 Q And your testimony is that you received
20 this document or a copy of it sometime after June 17,
21 1993, but you don't know when?

22 A Yes.

1 Q But you have no memory that there was any
2 long delay of your receipt of this document after
3 June 17; correct?

4 A Correct.

5 Q Did you actually -- I mean was there a copy
6 of this actually delivered to you personally in your
7 office?

8 A Yes.

9 Q And who else in the Kansas City field
10 office to your knowledge would have gotten a copy of
11 this June 17 memorandum?

12 A Lee Ausen would have received a copy.

13 Q Anyone else?

14 A Not off of this list, I don't think so, no.

15 Q Did you -- so off of the addressee list on
16 the June 17 memorandum, the only two people in the
17 Kansas City office who would have gotten it were you
18 and Mr. Ausen?

19 A Initially, yes.

20 Q Anyone in the legal staff?

21 A Yes, Julie Yanda would have received it.

22 Q She was the analog to you on the legal

1 side?

2 A Yes.

3 Q Is there anyone in an analogous position on
4 the legal side to Mr. Ausen who would have received
5 this?

6 A No, because the right titles aren't here
7 for Karen Carmichael to receive it.

8 Q To your knowledge, were copies of this
9 memorandum provided to anyone else in the
10 investigations office at the Kansas City field office
11 following the memo's arrival in your office?

12 A Normally, it would have been given to all
13 the criminal investigators.

14 Q Do you have any reason to believe that the
15 normal practice was not followed with regard to the
16 June 17, 1993 memo?

17 A No, I don't.

18 Q So your expectation is that although you
19 may not know for sure, your expectation is that this
20 memo -- a copy of this memo was provided shortly
21 after its arrival in the Kansas City office to every
22 criminal investigator in the office?

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1 A Yes.

2 Q Including Ms. Lewis?

3 A Yes.

4 Q Were any meetings or discussions held among
5 criminal investigators in the Kansas City field
6 office about this June 17, 1993 memo after its
7 arrival in your office?

8 A I don't know. I don't know.

9 Q You did not participate in any discussions
10 about the June 17, 1993 policy directive?

11 A No.

12 Q And as far as you're aware, no such
13 discussions took place?

14 A I didn't -- yes, that's true.

15 Q Now, did you read the June 17, 1993 memo
16 when you received it?

17 A Yes.

18 Q And what did you do with it after you read
19 it?

20 A I probably put it in the criminal file.

21 Q Was it your view that -- well, strike
22 that.

1 Did you think that the June 17, 1993
2 memorandum required any changes in the way that your
3 investigations office handled the preparation and
4 submission of criminal referrals when you read it?

5 A No, not really.

6 Q What do you mean no, not really?

7 A We were giving them --

8 Q Who is them?

9 A We were giving PLS the documents within a
10 day or two, so for them to review them before was no
11 big deal.

12 Q Well, just so the record is clear, before
13 June 17, 1993, the practice of the criminal
14 investigators -- well, the practice of the Office of
15 Investigations in Kansas City was to give PLS copies
16 of criminal referrals after the criminal referrals
17 had been submitted to the Justice Department;
18 correct?

19 A Yes.

20 Q Now, if you would turn to page 2, this says
21 in the first -- the latter half of the first
22 paragraph, "except in rare circumstances, criminal

1 referrals shall be reviewed by RTC investigations and
2 legal division criminal coordinators ('RTC criminal
3 coordinators') before they are delivered to the U.S.
4 Attorney and the FBI or other investigative agency."

5 Now, is it your testimony that that was
6 zero different, zero change from the practice that
7 you had followed in your office before June 17, 1993?

8 A Other than sending them to them before
9 instead of afterwards, it didn't change anything for
10 us.

11 Q Well, let me ask you this. Do you agree
12 that what that sentence I just read to you requires
13 is something different than simply providing a
14 courtesy copy of a criminal referral within two or
15 three days after the referral has already been
16 submitted to the Department of Justice?

17 A It means you have to provide it before.

18 Q So you do agree that the June 17, 1993 memo
19 from RTC Washington required your office of
20 investigations to do something with criminal
21 referrals that you were not previously doing with
22 them?

1 A Yes.

2 Q Specifically, it required you to provide
3 for review those criminal referrals to the legal
4 division before those referrals were submitted to the
5 Department of Justice?

6 A Yes.

7 Q And you understood that as of the time that
8 you first read the June 17, 1993 memorandum that
9 we've been talking about; correct?

10 A Would you repeat that?

11 Q You understood when you first read this
12 memorandum that the memorandum required your office
13 to provide for its review to the PLS criminal
14 referrals before those referrals were submitted to
15 the Justice Department?

16 A Yes.

17 Q So you did understand when you first read
18 this memo that you were being required by Washington
19 to change your procedures relating to whether you
20 gave the referrals to PLS before or after those
21 referrals were submitted to Justice?

22 A Yes.

1 Q Did you -- and it's your testimony that
2 even though you realized that the June 17, 1993 memo
3 required a change in your policy and practice, you
4 did not discuss this memorandum with anyone else in
5 your office?

6 A I wouldn't have discussed it with anyone
7 other than Lee, okay.

8 Q Did you discuss it with Lee Ausen?

9 A I don't remember if I did or didn't.

10 Q Is one of your duties as the head of the
11 investigations office in Kansas City to ensure that
12 people under your supervision and direction follow
13 companywide policies?

14 A Yes.

15 Q And when you receive -- well, was there any
16 question in your mind that the June 17, 1993
17 memorandum stated a mandatory companywide policy?

18 A No.

19 Q So you understood that this was a policy --
20 there was a policy articulated in the June 17, 1993
21 memo that your office needed to follow?

22 A Yes. Not an issue.

1 Q But you made no effort, at least that you
2 can recall, to bring this memorandum and its new
3 policy to the attention of people working under your
4 supervision within the investigations division. Is
5 that your testimony?

6 A No.

7 Q What did you do to bring this new policy to
8 their attention?

9 A I didn't have to do anything to bring it to
10 their attention because he got a copy.

11 Q Okay. So in other words, you realized that
12 Mr. Ausen would get a copy and you figured that that
13 was all you needed to do?

14 A Yeah, that's his responsibility. He got a
15 copy. It's his responsibility to inform his
16 investigators.

17 Q And you had no responsibility in that
18 informational process?

19 A Well, my responsibility is to make sure
20 that he knew of it, but since he got a copy, that was
21 fine.

22 Q And the only way that you believed -- the

1 only basis you had for believing that Mr. Ausen had
2 received a copy was what, that he fit a description
3 of the addressees on the front of the memorandum?

4 A Yes.

5 Q Did you ever see Mr. Ausen with a copy of
6 this memorandum?

7 A Later, yes.

8 Q How much later?

9 A Oh, gosh, I don't know.

10 Q Was it when you were all talking about what
11 to do with the Madison referrals in late September
12 1993?

13 A Yes, at least -- yeah.

14 Q But between June 17 and late September
15 1993, you never saw Mr. Ausen with a copy of the June
16 17 memorandum?

17 A Never saw him and no one ever said anything
18 about it, no.

19 Q You never talked to Mr. Ausen about it?

20 A No.

21 Q Never talked to anyone else in your office
22 between June 17 and late September 1993 about the new

1 policy that the legal division had to be given copies
2 for its review of all referrals before their
3 submission to the Justice Department?

4 MR. BOCOCK: He's asking you whether you
5 did it as distinct from whether you remember doing
6 it. Do you understand the difference?

7 THE WITNESS: Yes. I don't remember
8 talking to him about that, no, nor do I remember
9 talking to anyone from PLS about it.

10 BY MR. KRAVITZ:

11 Q Did your office submit any criminal
12 referrals between -- to the Justice Department
13 between June 17, 1993 and the time of the preparation
14 of the nine criminal referrals in the Madison case in
15 late September 1993?

16 A I think we did.

17 Q Do you remember what case it was in?

18 A No.

19 Q And were those referrals that you signed?

20 A Yes.

21 Q How many -- on how many occasions during
22 that time period between June 17 and late September

1 1993 did you sign criminal referrals to be submitted
2 to the Department of Justice?

3 A I really don't remember.

4 Q Was it more than one?

5 A I would think so.

6 Q Was it more than five?

7 A I don't really remember.

8 Q On any of those occasions, did you cause a
9 copy of the criminal referral to be provided to
10 PLS for a legal review prior to the referral's
11 submission to the Department of Justice?

12 A I don't remember. If I would have had this
13 document in a timely manner, I would have, but I
14 don't remember when I got the document.

15 Q Well, let me rephrase -- let me repeat the
16 question. You've testified that on at least one
17 occasion between June 17, 1993 and late September
18 1993, in a case -- in at least one case other than
19 Madison, your office submitted criminal referrals to
20 the Department of Justice; correct?

21 A I think we did, yes.

22 Q And those criminal referrals were signed by

1 you; correct?

2 A Yes.

3 Q Now, you're not -- it's not your testimony
4 that you signed those criminal referrals and
5 submitted them to the Department of Justice between
6 June 17, 1993 and the day you received the June 17,
7 1993 memo, is it?

8 A Quite possibly could have occurred.

9 Q Well, let me rephrase the question this
10 way, then. Between the time that you received the
11 June 17, 1993 memo, which you've testified was
12 sometime after June 17, and you have no memory that
13 there was any long delay in your receipt of the
14 memo --

15 A Yes.

16 Q -- so between the time you received the
17 June 17, 1993 memo and the time that Ms. Lewis
18 finished her preparation of the nine criminal
19 referrals in the Madison case in late September of
20 1993, did you sign any criminal referrals in other
21 cases to be submitted to the Department of Justice?

22 A I don't know. I just don't know.

1 Q Well, you've testified a few minutes ago
2 that you believe you signed some in at least one
3 other case.

4 A Yes.

5 Q Between June 17 and late September;
6 correct?

7 A Yes, I believe I did, yes, but I just can't
8 remember specific -- I just can't remember
9 specifically.

10 Q In any of these criminal referrals -- well,
11 regarding any of these criminal referrals, did you
12 cause copies of them to be sent to PLS for a review
13 prior to the referral's submission to the Department
14 of Justice?

15 A I don't remember.

16 Q Don't you think you would remember if you
17 had done that?

18 A No.

19 Q In light of everything that has followed
20 and all of the dispute over whether PLS should be
21 reviewing the Madison referrals, you don't think you
22 would have remembered if you had sent previous

1 referrals to PLS for review?

2 MR. BOCOCK: Well, your question assumes
3 facts not in evidence. He testified that he sent
4 them for informational review every time -- every
5 single time he sent them for informational review as
6 a practice, whether or not it was required by a
7 rule. Why would he remember if he sent them for
8 informational review or not? I don't understand.

9 MR. KRAVITZ: That's not what I asked him.

10 MR. BOCOCK: The dispute over the critique
11 has nothing to do with the dispute over informational
12 review.

13 MR. KRAVITZ: I disagree with that.

14 MR. BOCOCK: You need to ask a question
15 properly instead of trying to intentionally trick
16 him, which you are. That's why I made that
17 objection.

18 MR. KRAVITZ: Do you want the question to
19 be read back?

20 THE WITNESS: Yes.

21 (The reporter read the record as requested.)

22 BY MR. KRAVITZ:

1 Q Prior to their submission to the Justice
2 Department.

3 A No, I don't think I would have. I
4 didn't -- it was not my function to send the
5 referrals, okay. I would review the referral, sign
6 off and give it back to Mr. Ausen.

7 Q But Mr. Iorio, you read the June 17, 1993
8 memo as soon as you got it; right?

9 A Yes.

10 Q And you knew that it had a new requirement
11 for the handling of referrals prior to their
12 submission that was going -- that required a change
13 in the practices of your office; correct?

14 A It required a timing change, yes.

15 Q It required a change in the practices of
16 your office; correct?

17 A No, it required a timing change is what
18 you're asking me.

19 Q It required you to give the referral to
20 PLS before you gave the referral to the Justice
21 Department rather than after, as had been your
22 practice; correct?

1 A Correct.

2 Q That was a change in the practice that your
3 office had followed; correct?

4 A Yes and no. We're still giving them a
5 referral. We're giving it to them before instead of
6 after. I don't think the practice has changed. I
7 think the timing of delivery has changed, okay. The
8 practice is to give them a referral. We're giving
9 them the referral.

10 Q When you signed referrals between June 17
11 and late September 1993, did you do anything to
12 advise others in your chain of command that under the
13 June 17, 1993 memorandum, your office was required to
14 provide the criminal referrals to PLS for review
15 before sending the referrals on to the Justice
16 Department?

17 A Did I do anything -- you lost me on that
18 one.

19 Q During that time period, as criminal
20 referrals were being completed and you were signing
21 them and they were being prepared for sending or
22 submission to the Justice Department, did you do

1 anything to make sure that the June 17, 1993
2 memorandum was followed, specifically that those
3 referrals were sent to PLS for review before they
4 were submitted to the Justice Department?

5 A Nothing that I had -- nothing that I would
6 have not done previously, no.

7 Q Well, what do you mean by that?

8 A I would have signed the referral and given
9 it back to the criminal coordinator and he would have
10 processed it. That's what I always do.

11 Q So the answer is during the time period
12 between June 17 and late September 1993, you did
13 nothing relating to referrals you signed in that
14 period to make sure that the June 17, 1993 memorandum
15 was followed in your office; is that correct?

16 A Yes, I would say that's correct.

17 Q Was there a reason for that?

18 A No, but again, let's go back to the point.
19 I don't know when for sure we received this document,
20 okay.

21 Q I mean obviously the records are going to
22 speak for themselves and I apologize for not having

1 them here. The records will speak for themselves as
2 to when you submitted criminal referrals, but I mean
3 what is -- I think the record is as complete as it
4 can be as to when you remember receiving the June 17,
5 1993 memo.

6 A Yes. And the reason I say that is we
7 received the deal that wasn't signed dated September
8 8 in November, okay. That's 60 days. So, you know,
9 I don't know if that's an exception or a rule.

10 Q You testified previously that at some
11 point, you spoke with the people who had written the
12 June 17, 1993 memorandum; is that correct?

13 A Yes.

14 Q Now, there are four names here as being the
15 authors of this memorandum, but I think you said that
16 you spoke to two people?

17 A Yes.

18 Q Which two did you speak with?

19 A I spoke with Jim Dudine and I spoke with
20 Carl Gamble.

21 Q Does Carl Gamble's name appear on this
22 memorandum?

1 A No, he is not on this memorandum, but he is
2 the criminal coordinator for the RTC in Washington.

3 Q He works underneath Mr. Dudine?

4 A No, I think at that point he worked under
5 Mr. -- I think he worked under Mr. Hinds.

6 Q When was it that you spoke with Mr. Dudine
7 and Mr. Gamble about the June 17, 1993 policy
8 directive?

9 A Late September, 28, 29, somewhere in
10 there. 27, 28, 29.

11 Q So it wasn't shortly after your receipt of
12 the memo?

13 A No.

14 Q It wasn't as if you had some confusion in
15 your mind when you received it in June or whenever
16 you received it and called up to find out what it
17 meant?

18 A No.

19 Q What were the circumstances under which you
20 spoke with Mr. Gamble and Mr. Dudine about the June
21 17, 1993 memo?

22 A The interpretation of the wording "shall be

1 reviewed."

2 MR. BOCOCK: I think his question is what
3 were the circumstances that caused you to have that
4 conversation.

5 THE WITNESS: What?

6 MR. BOCOCK: Why were you talking to them
7 about it?

8 BY MR. KRAVITZ:

9 Q Why were you talking to Gamble and Dudine
10 about the June 17 memorandum?

11 A Because of the interpretation by PLS.

12 Q And this all came up in the context of
13 whether the nine referrals in the Madison case needed
14 to be reviewed or critiqued in some way by PLS prior
15 to their submission to the Department of Justice?

16 A There was no problem with them reviewing
17 the referrals. The critiquing of the referrals was a
18 different issue.

19 Q But I just want to make sure we're clear.
20 This all came up in the context of what to do with
21 the Madison referrals in late September 1993;
22 correct?

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1 A Yes.

2 Q This didn't have anything to do with some
3 other case?

4 A No, that's true.

5 Q Did you talk with Mr. Dudine and Mr. Gamble
6 at the same time or were these separate
7 conversations?

8 A No, they were both in Mr. Dudine's office,
9 I think, on a speakerphone and Mr. Ausen and I were
10 in Mr. Ausen's office on a speakerphone.

11 Q Was it just the four of you in the
12 conversation?

13 A To the best of my recollection, yes.

14 Q Was there one conversation or more than one
15 conversation between you and people in Washington on
16 the subject of the interpretation of the June 17,
17 1993 memo?

18 A I just recall the one with all four of us,
19 okay.

20 Q Okay. Who initiated that conversation?

21 A I think I did.

22 Q Why did you do that?

1 A Because I understood what this said, okay
2 (indicating).

3 Q You understood what what said?

4 A This June 17 policy.

5 Q Just -- so the record is clear you're
6 pointing to something, but the record doesn't pick
7 that up.

8 A It's the June 17 criminal referral
9 document, specifically page 2, the second half of the
10 first paragraph.

11 Q That same sentence that I read before?

12 A Yes.

13 Q "Except in rare circumstances, criminal
14 referrals shall be reviewed by RTC investigations and
15 legal division criminal coordinators (RTC criminal
16 coordinators) before they are delivered to the U.S.
17 Attorney and the FBI or other investigative agency."

18 A Right.

19 Q Now, what was -- there was an issue as to
20 what that meant?

21 A Yes.

22 Q What was the issue?

1 A I interpreted that to mean that we were to
2 give them the documents before we transmitted them,
3 okay. I was told that we could not transmit the
4 documents until after they had critiqued the
5 documents and found them acceptable for
6 transmission. I objected to that interpretation.

7 MR. BOCK: Who told you that?

8 THE WITNESS: Julie Yanda told me that.

9 BY MR. KRAVITZ:

10 Q Just so I'm clear, before your
11 conversation -- before this conference call that
12 you've been describing, what was your understanding
13 of what that sentence required the office of
14 investigations to do with criminal referrals?

15 A Provide them with an information copy
16 before we transmitted it.

17 Q Provide PLS an information copy before you
18 transmitted the referral to the Justice Department?

19 A Correct.

20 Q And simply as like a courtesy, and the only
21 difference between what you were doing then --
22 between what you would do then and what you had been

1 doing previously would be --

2 A We did it before instead of after.

3 Q And your understanding was that -- well,
4 let me ask you this. What did you -- how did you
5 interpret the word "reviewed" in this sentence? Read
6 it with me. "Except in rare circumstances, criminal
7 referrals shall be reviewed by RTC investigations and
8 legal division criminal coordinators before they are
9 delivered to the U.S. Attorney and the FBI or other
10 investigative agency."

11 A Read for informational purposes.

12 Q So there had to be some period of time
13 between when you gave the criminal referral to
14 PLS and the time that you gave the referral to the
15 Justice Department?

16 A Yes.

17 Q And you understood that?

18 A Yes.

19 Q What period of time did you think was
20 required by this June 17 memo before your conference
21 call with people in Washington?

22 A Oh, anywhere -- you know, maybe three,

1 four, five work days, no more than a week. How long
2 does it take to read a referral? Not a long period
3 of time.

4 Q But your expectation, even before the
5 conference call with Mr. Gamble and Mr. Dudine, was
6 that under the June 17 memorandum, your office was
7 required to submit a criminal referral to PLS three,
8 four, five working days before your office could
9 submit that referral to the Department of Justice; is
10 that correct? I believe that's what you just said.

11 A Well, you changed the wording a little bit
12 which I think changes the meaning. We had to provide
13 them a copy for them to review, okay, and give them
14 some time to look at it. Whether or not they
15 reviewed it or didn't review it in a reasonable time
16 span was not my problem.

17 Q But you understood that you needed to give
18 it to them three, four, five working days -- whether
19 they reviewed it or not, you needed to give it to
20 PLS three, four, five working days before you gave
21 the referral to the Justice Department?

22 A Yes.

1 Q So you understood -- and you understood
2 that even before you had the conference call with
3 Mr. Gamble and Mr. Dudine in late September?

4 A Yes.

5 Q Did Mr. Ausen agree with that
6 interpretation during this time period before the
7 conference call with Dudine and Gamble?

8 A Yes. I don't recall that he didn't.

9 Q Did you discuss it with -- I assume you
10 discussed it with Mr. Ausen. This was an issue,
11 wasn't it?

12 A Yes. And I don't think that was a problem
13 for him either.

14 Q So both you and Mr. Ausen understood that
15 the criminal referral had to go to PLS three, four,
16 five working days before it could be submitted to
17 Justice; correct?

18 A Yes.

19 Q Now, your understanding also was that you
20 had absolutely no requirement to consider any
21 critique or review provided by legal; is that right?

22 A That was my understanding.

1 Q What did you think that these three -- was
2 supposed to happen in these three to five working
3 days between the time that you gave the referral to
4 the legal division and the time that you then would
5 be able to give the referral to the Justice
6 Department?

7 A Well, I hoped that they would read it and
8 gain an understanding of what the subject and the
9 content of the referral was.

10 Q You didn't think that there was -- that the
11 memorandum contemplated any collaboration between the
12 legal division and the investigations office during
13 that three- to five-day working period that you
14 interpreted the memorandum to require?

15 A It didn't state that.

16 Q That wasn't my question.

17 A No, I didn't.

18 Q Did that ever occur to you?

19 A No.

20 Q So you thought that it was just three to
21 five working days of dead time when the referral
22 would be sitting over in the legal division and

1 nothing would come of that and then three or five
2 days later you would just submit the referral to the
3 Justice Department?

4 A That's what I thought and that's what they
5 confirmed for me on the phone conversation.

6 Q And that's what Mr. Ausen thought as well?

7 A I guess so. I don't know exactly what he
8 thought. Well, I think that's -- you know, that's --
9 I think that's fairly accurate.

10 Q Well, you discussed it with Mr. Ausen, his
11 interpretation of the June 17 memorandum, didn't you?

12 A Yeah. I think he thought that three to
13 five days was a reasonable period of time for them to
14 read it.

15 Q And that during that time, both you and
16 Mr. Ausen agreed that during that three- to five-day
17 period, nothing would happen essentially in terms of
18 collaboration between PLS and investigations?

19 A Yes. There had never been any history of
20 that in the past and we didn't anticipate a drastic
21 change, no.

22 Q Just be dead time?

1 A Yes.

2 Q Let's talk about the telephone conversation
3 that you and Mr. Ausen had with Mr. Gamble and
4 Mr. Dudine. When did that conversation occur, to the
5 best of your memory?

6 A Late September.

7 Q 1993?

8 A Yes.

9 Q And again, you said this was a conversation
10 that was initiated by you?

11 A Yes.

12 Q And it was initiated by you because lawyers
13 in the legal division in Kansas City --

14 A One lawyer.

15 Q One lawyer --

16 MR. BOCK: You mean the professional
17 liabilities section.

18 MR. KRAVITZ: Yes.

19 MR. BOCK: Which is not the legal
20 division of RTC. It's the professional liabilities
21 section responsible for, you know, suing
22 professionals against whom the RTC has claims, not

1 the general counsel that reviews claims.

2 BY MR. KRAVITZ:

3 Q Mr. Iorio, during the past couple of hours,
4 whenever I have used the term "legal division," did
5 you understand that I was referring to PLS?

6 A Yes.

7 MR. BOCOCK: I didn't mean to suggest
8 otherwise. I just meant in this context.

9 MR. KRAVITZ: Fair objection.

10 MR. BOCOCK: It sounds like they're the
11 general counsel and they are supposed to review stuff
12 instead of they are the people who sue lawyers and
13 accountants.

14 MR. KRAVITZ: Fair objection. I just
15 wanted to make sure the record is clear. I
16 appreciate the clarification.

17 BY MR. KRAVITZ:

18 Q You understood before the time that you
19 initiated the telephone conference with Dudine and
20 Gamble that one lawyer in the PLS in Kansas City had
21 a different interpretation of the June 17, 1993 memo;
22 right?

1 A Yes.

2 Q Who was that one lawyer?

3 A Julie Yanda.

4 Q What did Ms. Yanda tell you she thought the
5 June 17, 1993 memo required?

6 A That they had to have the opportunity to
7 review and critique the referrals and we could not
8 send out the referrals until she gave her permission.

9 Q Did Ms. Yanda believe that the June 17,
10 1993 memorandum required any collaboration between
11 the two offices or simply that it required your
12 office to wait until PLS had had a chance to review
13 the referral?

14 A I don't know --

15 MR. BOCOCK: Your question is unclear. I
16 think you're just tired. Could you just restate
17 that? You used -- I just -- your question is
18 ambiguous. I don't understand what you mean by
19 "collaboration" or "review."

20 BY MR. KRAVITZ:

21 Q Let me ask you in a little more open-ended
22 way. What -- other than what you've told us already

1 about what Ms. Yanda said she thought the June 17,
2 1993 memo required, what else did she tell you it
3 required?

4 A It's not what she thought. She said this
5 is the way it is.

6 Q Well, you understood that that was her
7 opinion?

8 A Well, it was worded more strongly than
9 that.

10 Q Was she your supervisor?

11 A No.

12 Q Did you have to do what she said?

13 A No.

14 Q This was a difference of opinion; right?

15 A Well, that's a nice way to say it, yes.

16 Q She couldn't tell you what to do, could
17 she?

18 A She attempted to.

19 Q That wasn't my question.

20 A Well, she can tell me what to do. That
21 doesn't mean I have to do it.

22 Q Okay. You were not required to take

1 directions from Julie Yanda as of September 1993,
2 were you?

3 A That's correct.

4 Q So you and Mr. Ausen called Mr. Dudine and
5 Mr. Gamble?

6 A Yes.

7 Q And you explained to them what the
8 disagreement appeared to be in the Kansas City office
9 as to the requirements of the June 17 memo?

10 A Yes.

11 Q Were -- did Mr. Dudine tell you what -- how
12 he interpreted -- well, what his interpretation was
13 of this disputed section in the June 17, 1993 memo?

14 A They both did.

15 Q Did they both tell you the same thing?

16 A Yes.

17 Q What did Mr. Dudine and Mr. Gamble tell you
18 during this telephone call in late September 1993
19 about what the June 17, 1993 memo required?

20 A They said that the memo was geared to
21 provide PLS copies of referrals for informational
22 purposes, that it was not really geared for our

1 office because we had always given PLS copies, but it
2 was geared to other offices where there had not been
3 the exchange of information. So I said well, does it
4 mean that we cannot transmit the referrals until
5 PLS says that they're all right to go. And they said
6 no, that's not the intent of the document.

7 Q Did you ask whether you were required to
8 submit the criminal referrals to PLS before
9 submitting them to the Justice Department?

10 A No.

11 Q Why not?

12 A I understood it, that we had to.

13 Q You knew that already?

14 A Yes.

15 Q Even though you hadn't done it in any of
16 the other referrals between June and September?

17 MR. BOCK: We're going to stop this if
18 you're going to start that. He never said he didn't
19 do it. He said he didn't undertake any steps to do
20 it because he gave the memos to everyone in the
21 office and Ausen had the memo. He never, ever said
22 he didn't give it to PLS before. That is a grave

1 misrepresentation of his testimony.

2 MR. KRAVITZ: I disagree with that.

3 MR. BOCK: Grave. Let's ask him.

4 Mr. Iorio, is it true that you
5 intentionally never gave PLS copies of the criminal
6 referrals before you sent them in after you got the
7 copy of this memo dated June 17, 1993? Did you
8 intentionally keep it from PLS?

9 THE WITNESS: No.

10 MR. BOCK: Okay. Now we've got it
11 cleared up so we know what the testimony is.

12 Go ahead.

13 MR. KRAVITZ: I'm glad you think that
14 you've cleared something up. I disagree. You can
15 make gratuitous remarks on the record as much as you
16 want.

17 MR. BOCK: I know what you're doing. I
18 understand your point and you've made your record on
19 it, but you are intentionally trying to distort the
20 facts. If you want to say that Mr. Iorio didn't take
21 affirmative steps to see that this memo was followed
22 beyond what he testified to, that's a very legitimate

1 point and the record has been made to that point and
2 that will stand.

3 MR. KRAVITZ: I have to tell you, you know,
4 for you to make gratuitous comments like that on the
5 record is not only unprofessional, but inappropriate
6 and you know, for you to accuse me of intentionally
7 misrepresenting the facts is not only offensive, but
8 very inappropriate.

9 MR. BOCOCK: The record will speak for
10 itself.

11 MR. KRAVITZ: Well, it will.

12 MR. BOCOCK: So we don't need to --

13 MR. KRAVITZ: We're all confident of that,
14 but I really think this deposition has been handled
15 quite professionally and I really wish you would not
16 make comments like that. It's not productive.

17 MR. BOCOCK: Well, I apologize, but I
18 really think that a review of the record will
19 indicate that it was your question that prompted that
20 reasonable objection, but let's go on. We don't need
21 to belabor it.

22 MR. KRAVITZ: Let's go on.

1 BY MR. KRAVITZ:

2 Q What did Mr. Dudine and Mr. Gamble tell you
3 as to whether the investigations office needed to
4 wait for PLS to do any kind of critique or review
5 before sending the referrals to the Justice
6 Department?

7 A I think they instructed me to give them
8 reasonable time.

9 Q Was it discussed what reasonable time meant
10 under these circumstances?

11 A I really -- I don't remember what, you
12 know, the definition of reasonable time was. I
13 remember that Julie said she needed at least three
14 weeks, and I said I'm not going to give you three
15 weeks.

16 Q Julie Yanda had told you before your
17 telephone call with the Washington people that she
18 needed three weeks?

19 A I think so. I can't remember if it was
20 before or after, but it was within that time span,
21 that she needed three weeks.

22 Q And then what happened?

1 A I told her that I wouldn't give her three
2 weeks, that I would give her to such-and-such a date,
3 that we were going to send those, I think, October 8
4 was the date, which, in fact, gave her almost two
5 weeks, okay.

6 Q What -- did you discuss with Mr. Dudine and
7 Mr. Gamble whether there should be any collaboration
8 between PLS and your office on the referrals before
9 the time that they were actually submitted to the
10 Justice Department?

11 A No, not after they told me that they viewed
12 it as an informational review, to give them an
13 opportunity to read them and to see what was
14 contained in that.

15 Q So your testimony is that Mr. Dudine and
16 Mr. Gamble told you and Mr. Ausen that the purpose of
17 giving the referrals to PLS before submitting them to
18 the Justice Department was solely informational for
19 PLS's purposes?

20 A Yes.

21 Q And it's your testimony that Mr. Dudine and
22 Mr. Gamble said absolutely nothing about another

1 purpose being to encourage collaboration between
2 PLS and the Office of Investigations toward the
3 improvement of the criminal referrals?

4 A Yes.

5 Q And you're sure about that?

6 A Yes.

7 Q The criminal referrals in the Madison case
8 were actually submitted to the Justice Department on
9 October 8, 1993; is that right?

10 A Yes.

11 Q Was that also the same day that
12 PLS provided its written review or critique of the
13 criminal referrals?

14 A I think it was provided a day earlier, it
15 was provided October 7.

16 Q Who in PLS provided that document and who
17 did he or she give it to in your office?

18 A I think it went to Julie Yanda and then it
19 was sent over -- I can't remember if it was sent to
20 me or if it was sent to Lee. I don't remember.

21 Q Did you see the review or critique before
22 the time that the criminal referrals were actually

1 submitted to the Justice Department?

2 A Yes.

3 Q Who else in your office, to your knowledge,
4 saw the review or critique before the time that the
5 referrals were sent to the Justice Department?

6 A I think everyone that worked on the
7 referrals were required to read the critique, so
8 there would have been three, four investigators, five
9 investigators. I'm not sure as to the department.

10 Q Was there any discussion between you and
11 the criminal investigators who had worked on the
12 criminal referrals about whether any suggested
13 changes would be incorporated in the criminal
14 referrals before their submission?

15 A Yes.

16 Q Tell us about that.

17 A They read the documents, and I can't
18 remember if I was -- if I was in Lee's office or my
19 office, I don't remember, but there were a number of
20 them there. And Lee had been meeting with them. I
21 walked in. I had read the critique a number of
22 times, and I said are there any -- is there anything,

1 any changes you want to make as a result of this
2 document, and they said no.

3 Q Now, you yourself read the critique or
4 legal review that had been prepared by Ms. Yanda?

5 A Yes. Not prepared by Ms. Yanda.

6 Q By Ms. Carmichael, I'm sorry.

7 A And Mr. Adams, I think, prepared it.

8 Q You read that?

9 A Yes.

10 Q And it was your view as well that no
11 changes should be made to any of the nine criminal
12 referrals?

13 A Yes.

14 Q You rejected every single one of the
15 suggested or proposed changes?

16 A I don't know that they were proposed
17 changes as they were questions.

18 Q Okay. You felt that none of those -- none
19 of the questions raised in the legal review or the
20 critique were questions that needed to be answered or
21 looked into further before the referrals were
22 submitted?

1 A Yes.

2 Q In your view, the questions that were
3 raised by the legal review or legal critique were
4 questions that were legal questions more than factual
5 questions and therefore questions that should be left
6 to the United States Attorney's office to answer?

7 A Yes. There were some factual questions
8 there, not a lot, but some, but most -- I viewed most
9 of those questions as being legal questions, yes.

10 Q Now, Mr. Dudine testified in his deposition
11 yesterday that the standard -- the RTC standard for a
12 criminal referral was reasonable basis to believe
13 that criminal offense has been or may have been
14 committed. Would you agree with that testimony?

15 A Yes.

16 Q You're familiar with the concept of
17 elements of criminal offense?

18 A Yes.

19 Q You know what that means?

20 A Yes.

21 MR. BOCK: Mr. Iorio went to law school.

22 MR. KRAVITZ: Well, then I have no question

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1 that he knows what that means.

2 BY MR. KRAVITZ:

3 Q And you understand, then, that the standard
4 requiring a reasonable basis to believe that a crime
5 has been committed in fact requires a reasonable
6 basis to believe that each and every element of a
7 crime has been committed?

8 A Uh-huh.

9 Q Yes?

10 A Yes.

11 Q Why, then, would you say that questions in
12 the legal review about -- well, strike that.

13 And those, then, therefore are issues that
14 need to be addressed at the RTC field office level
15 before submitting a referral to the Justice
16 Department; right? You need -- you've already
17 testified that you agree with Mr. Dudine's testimony
18 that before you can submit a referral to Justice, you
19 have to be satisfied that there's a reasonable basis
20 to believe that each and every element of a crime has
21 been committed?

22 A I think the terminology is "substantial

1 basis of fact."

2 Q Okay. To believe that a crime has been
3 committed?

4 A Yes.

5 Q Therefore, to believe that each and every
6 element of a crime has been committed; right?

7 A Generally, yes.

8 Q And that's something -- I mean you don't
9 want to be sending junk up to the Justice Department,
10 do you?

11 A No.

12 Q So you want to make sure that your
13 referrals actually have a sufficient basis in fact
14 that each and every element of a crime has actually
15 been committed?

16 A Yes.

17 Q So that's a review that you do in your mind
18 when -- when you're reading a referral before you
19 sign it; right?

20 A Yes.

21 Q Why, then, would you say that questions in
22 Ms. Carmichael's legal review that have to do with

1 elements of the offense or offenses are questions
2 just for the U.S. Attorney's office to deal with
3 rather than for your office to deal with?

4 A Well, if we -- if we had the information,
5 you know, if we could make a perfect criminal
6 referral and put the whole thing in there, there
7 would never be any issues on a review, okay, but we
8 can't do that, so we know that the referrals are
9 never perfect, that they are always slightly or more
10 slightly imperfect, simply because we don't have the
11 power to obtain the evidence to make them perfect. I
12 don't know how you overcome that problem, okay, but
13 if it passes a reasonable test that we've got as much
14 as we can and we indicate in there additional steps,
15 people to be interviewed, records to be secured, that
16 will make it even better, then I feel very
17 comfortable with it.

18 Q And you felt that way about the Madison --
19 the nine referrals in the Madison case, even after
20 your reading of Ms. Carmichael's memo on October 7 or
21 8, 1993?

22 A Yes.

1 Q Are you okay to keep going for 20 minutes
2 without a break?

3 A Yes.

4 MR. BARTOLOMUCCI: Do you think you'll be
5 able to wrap up in that time?

6 MR. KRAVITZ: I'll do my best.

7 MR. BARTOLOMUCCI: Well, then go for it.

8 BY MR. KRAVITZ:

9 Q One question raised by Ms. Carmichael's
10 review or critique was whether a woman named Loreen
11 McDougal, I believe is Mr. McDougal's mother, was
12 still alive. Do you remember that question being
13 raised in Ms. Carmichael's memo?

14 A Yes, I can remember that.

15 Q Was that something that you thought was
16 important to know?

17 A No.

18 Q Why not?

19 A Because she really -- we didn't think she
20 had any knowledge of what had happened. He had
21 purchased property in her name and we didn't feel
22 that she had any knowledge of that, because the

1 criminal referral didn't mention her, it mentioned
2 him, so I didn't think that was factually germane to
3 the issue at hand.

4 MR. KRAVITZ: Are you okay if we keep
5 going?

6 MR. BOCOCK: Yes, I'll be right back.

7 (Mr. Bocock left the deposition.)

8 BY MR. KRAVITZ:

9 Q Wasn't Loreen McDougal a target of one of
10 those referrals?

11 A I think her name was mentioned as a
12 potential witness. I don't remember if she was a
13 target or witness.

14 Q Would you agree that if Loreen McDougal was
15 listed as a target in one of the nine referrals, that
16 it was a reasonable question to raise whether she was
17 still alive?

18 A No, not really. Whether she was alive or
19 dead didn't change the fact that the act had
20 happened. As I recall, she was a witness, and the
21 actual activity that occurred was done by Jim
22 McDougal, but I -- you know, that's just off the top

1 of my head. I haven't looked at those referrals in a
2 long time. That's what I recall.

3 Q Well, let me just ask you this. Assume for
4 purposes of this question that Loreen McDougal was
5 listed in one of those referrals as a suspect or
6 subject of the referral. If that is correct, would
7 you agree that it's important to know whether she is
8 in fact dead or alive before sending her name off as
9 a subject of a referral to the Department of Justice?

10 A In the particular situation that we just
11 talked about? No, I don't think it's important
12 whether she's alive or dead. The criminal --

13 Q In other words, just let the Justice
14 Department figure that out?

15 A Yeah. The criminal act had occurred, we
16 didn't think she was involved, so they can find that
17 out easier than we can.

18 Q Okay, but we have now got on the record
19 that you're a graduate of law school. You know as a
20 matter of law that dead people can't be prosecuted,
21 it just doesn't happen; right?

22 A Yes.

1 Q But that was something that you would leave
2 for Justice to sort out?

3 A But we can get the assets back, even though
4 they are dead we can get the assets back.

5 (Mr. Bocock returned to the deposition.)

6 Q You said a couple of times earlier during
7 your testimony that one really has to see Ms. Lewis's
8 tape recorder to believe that it could go on
9 accidentally.

10 A Yes.

11 Q What does it look like?

12 A Well, it's not very big. It's about, you
13 know, this size (indicating) and it's got --

14 Q Just for the record, how big, what are you
15 indicating?

16 A Oh, it's -- maybe a little bigger than that
17 glass case.

18 Q So maybe about 6 inches long by 2 inches by
19 1 inch wide?

20 A It's one of those hand-held things, so big
21 (indicating).

22 Q About 6 inches by 2 inches by 1 inch?

1 MR. BARTOLOMUCCI: The size of a TV remote.

2 THE WITNESS: It's a little bigger, a

3 little boxier, something like that.

4 BY MR. KRAVITZ:

5 Q What color is it?

6 A I think it's -- as I recall, it's tan, tan
7 and silver, tan and gold. It's one of those -- not a
8 light tan, but maybe a medium tan.

9 Q Did Ms. Lewis always keep her tape recorder
10 in the same place in her office or did it move
11 around?

12 A Well, I don't really know. I guess
13 wherever she was using it it would be -- I really
14 don't know.

15 Q What did Ms. Lewis use that tape recorder
16 for on occasions other than February 2, 1994?

17 A She would -- to my information, she would
18 use it to dictate as she came across things, you
19 know, instead of writing it all down, she would
20 dictate it.

21 Q Did you ever see Ms. Lewis dictate anything
22 into her tape recorder?

1 A Yeah, I'd walk by and she'd be saying
2 things into it.

3 Q Was this dictation she was doing, was that
4 stuff for work, a diary, notes, what was that?

5 A I don't know. I thought it was for work.

6 Q Has Ms. Lewis ever kept a diary, to your
7 knowledge?

8 A I don't know.

9 Q She's never said anything about that?

10 A No.

11 Q How many times would you estimate you've
12 seen Ms. Lewis dictating into her tape recorder?

13 A Oh, four, five, something like that.

14 Q Is this -- is this a dictation machine as
15 opposed to like a tape deck that someone would play
16 music out of?

17 A Oh, yeah, it's like a little hand-held
18 Dictaphone that you would take the tape and somebody
19 would transcribe for you. It's got the little tiny
20 tapes.

21 Q To your knowledge, did Ms. Lewis ever use
22 this tape recorder for playing music in her office or

- 1 anywhere else?
- 2 A I don't think so, but I don't know.
- 3 Q As far as you know, this tape recorder was
- 4 strictly used as a Dictaphone by Ms. Lewis?
- 5 A Yes.
- 6 Q Now, you testified earlier -- well, strike
- 7 that.
- 8 Do you know how this tape recorder is
- 9 turned on or how the record function is turned on?
- 10 A No, I do not know.
- 11 Q You've never used this tape recorder?
- 12 A I have not used this tape recorder.
- 13 Q Have you ever had it in your hands?
- 14 A No.
- 15 Q Has anyone other than Ms. Lewis ever used
- 16 it, to your knowledge?
- 17 A I don't know. I don't even know if it's
- 18 hers or the government's. I really don't know.
- 19 Q Did you see the tape recorder at any time
- 20 on February 2, 1994?
- 21 A I've walked by her office and saw it on the
- 22 desk. Whether I saw it that day or not, I don't

- 1 know.
- 2 Q So you don't know whether you saw it that
- 3 day?
- 4 A No.
- 5 Q You testified that your voice has been
- 6 recorded on that tape recorder at some point in the
- 7 past; is that correct?
- 8 A Yeah.
- 9 Q Was that before or after February 2, 1994?
- 10 A I think it was before.
- 11 Q What were the circumstances under which you
- 12 were recorded on that tape recorder before February
- 13 2, 1994?
- 14 A Someone was in there and I walked in and
- 15 asked her a question or said something, I forget, and
- 16 the next day or so or something, she was playing
- 17 something back and said oh, you're on here, too, so
- 18 that -- you know, that had happened before.
- 19 Q Did you on that previous occasion learn how
- 20 it came to be that your voice was caught on the tape
- 21 recorder?
- 22 A No, I didn't really -- I don't know if the

1 recorder had been left on or it came on on its own,
2 but it didn't -- you know, it didn't bother me.

3 Q So it is not the case that on that occasion
4 that your voice was captured on the tape recorder,
5 that you learned that the tape recorder had gone
6 on -- had been turned on accidentally?

7 A I didn't pay any attention. I didn't
8 really know one way or the other.

9 Q Do you know of any instance other than
10 February 2, 1994 in which anyone has claimed that
11 that tape recorder of Ms. Lewis's went on
12 accidentally by itself?

13 A I don't know.

14 Q You don't know of any other instance?

15 A I don't know the answer to that question.

16 Q Has Ms. Lewis ever told you about another
17 occasion on which her tape recorder has turned on by
18 itself?

19 A No, I don't know that it went on by itself
20 or sometimes it would be on and she would forget it
21 was on and just run forever. I don't know what the
22 situation is.

1 Q Okay, but the answer to the question is
2 Ms. Lewis never told you about another situation or
3 another circumstance in which her tape recorder
4 actually turned itself on other than the February 2
5 circumstance; is that correct?

6 A And I don't know on February 2 if she
7 accidentally left it on or it came on by itself. I
8 don't know.

9 Q Let me -- just so the record is clear, put
10 February 2 to one side. Has Ms. Lewis told you about
11 another instance in which her tape recorder turned on
12 by itself?

13 A No, not turned on by itself.

14 Q What exactly did Ms. Lewis tell you about
15 how her conversation with April Breslaw came to be
16 captured on her tape recorder?

17 A She told me that she looked down and saw
18 that the tape recorder was on.

19 Q Where was the tape recorder when she looked
20 down and saw it?

21 A I guess it was on her desk.

22 Q Was she at her desk?

1 A I don't know, I wasn't there, but she
2 looked down and saw that the tape recorder was on.
3 She did not say whether it came on accidentally, set
4 itself off or she had just left it running, but that
5 she saw that it was on and decided not to turn it
6 off.

7 Q Did you ask Ms. Lewis how she -- what her
8 belief was as to how the tape recorder was turned on
9 in the first place?

10 A I really don't remember. I remember
11 language to the effect that "I must have left it
12 on."

13 Q Okay, so Ms. Lewis did not tell you that
14 the tape recorder was turned on by itself?

15 A She didn't tell me it was or it wasn't. I
16 don't think she knew.

17 Q Well, didn't you just say that Ms. Lewis
18 said "I must have left it on"?

19 A Yes.

20 Q It must have --

21 A "I must have just left it on," but she said
22 that like I really don't know, maybe that's what

1 happened. I don't know. I don't think she knows.

2 Q But according to what Ms. Lewis told you,
3 her best guess or understanding as to what happened
4 was that the tape recorder had just been running from
5 before and she had left it on?

6 A I think so. I think that's what she
7 thought.

8 Q And that's what she told you; right?

9 A Yes, that was a possibility, I think.

10 Q When was it that Ms. Lewis told you that?

11 A Oh, jeez, that was a long time afterwards.

12 That was -- oh, gosh, I think that was the day that
13 Representative Leach made his speech on the floor of
14 the House.

15 Q March 1994?

16 A Yes.

17 Q Certainly -- then it was certainly
18 significantly before Ms. Lewis testified before the
19 House in the summer of 1995; right?

20 A Yes, yes.

21 Q You've testified and given several
22 different bases for your opinion that attempts were

1 made within the RTC to obstruct the investigation of
2 the failure of Madison Guaranty Savings & Loan. Is
3 that fair to say? And without going into all the
4 bases, the record speaks for itself, but you've
5 mentioned --

6 A Generally, I think that's true, yes.

7 Q You have mentioned several incidents that
8 have added up to -- that have combined to lead you to
9 the conclusion that someone somewhere within the RTC
10 or perhaps outside the RTC attempted to obstruct
11 investigations into the failure of Madison. What I
12 want to ask you is, can you put any names to that
13 conclusion? I mean who is it within the RTC and who
14 is it outside the RTC whom you can identify as having
15 either obstructed or attempted to obstruct any
16 investigation involving the failure of Madison
17 Guaranty Savings & Loan Association?

18 A Well, I need to clarify. The investigation
19 was finished. The following-up with the Office of
20 Independent Counsel providing the work is a key
21 issue. That's a post-referral deal.

22 Q I'm counting all that.

1 A Who do I think?

2 Q Just so the record is clear, I want to make
3 sure my question is inclusive. I'm going to list off
4 at least what my notes indicate your testimony
5 indicated being the bases for your conclusion that
6 you testified to previously. You talked about the
7 issue of PLS's critique of the referrals and their
8 insistence in doing one.

9 A Yes.

0 Q And the delay that that caused. You talked
1 about problems relating to subpoena compliance, you
2 talked about the removal of Jean Lewis from the case
3 or from the investigation. You talked about the
4 prohibition in 1994 of investigators talking to
5 officials of the independent counsel's office without
6 PLS permission. You talked about the administrative
7 leave that you, Ausen and Ms. Lewis were placed on.
8 You talked about the scope of the legal review
9 conducted by Pillsbury, Madison. You talked about --
0 and actually I think that fairly summarizes the
1 various bases that you testified about.

2 The record obviously will set forth exactly

1 what you said, but I just want to make sure that you
2 understand, I'm including all of these considerations
3 that you've testified about as leading up to your
4 conclusion that someone somewhere obstructed and
5 intended to obstruct or attempted to obstruct
6 investigations relating to the failure of Madison
7 Guaranty Savings & Loan.

8 My question is -- do you understand that,
9 first of all?

10 A Yes.

11 Q My question is, can you identify for us who
12 either obstructed or attempted to obstruct any of
13 these investigations?

14 A No, I cannot tell you what their intent is,
15 okay, I have no idea what their intent is, but I see
16 the end result. You're going to have to ask them
17 what their intent is.

18 Q Can you identify them for us?

19 A Yes. Julie Yanda, Tom Hinds, I think
20 Ellen Kulka.

21 Q Ellen Kulka?

22 A Yes. Andy Tomback, and I don't know the

1 hierarchy, I don't know who was doing what they were
2 told. There's lots I don't know, okay, but just from
3 what I see at my end, I think those four for sure.

4 Q How about outside the RTC, can you identify
5 anyone from outside the RTC who obstructed or
6 attempted to obstruct any of the investigations
7 relating to the failure of Madison Guaranty Savings &
8 Loan?

9 A No, I can't.

10 Q Let me just raise one issue with your
11 lawyer. It's now 7:14 and I have every intention of
12 allowing you to leave at 7:15 because I know you need
13 to catch your plane.

14 What I would ask is whether Mr. Iorio would
15 be willing to answer this one question as to each --
16 as to each of the four people he just named and
17 possibly prepare an affidavit or send us a notarized
18 response. The question being what is it that you
19 believe Julie Yanda, Tom Hinds, Ellen Kulka, and
20 Andy Tomback did either to obstruct or to attempt to
21 obstruct any of the investigations relating to the
22 failure of Madison Guaranty Savings & Loan

1 Association.

2 MR. BOCOCC: When you use the word
3 "obstruct," we mean hinder, delay? Not obstruction
4 of justice as that term is sometimes used. They're
5 different.

6 MR. KRAVITZ: Well, I agree with that.

7 MR. BOCOCC: Obstruction of justice is a
8 crime. Obstruction of investigation used in the
9 vernacular sense means anything to delay or impede
10 the investigation. Isn't that the way you mean it?

11 MR. KRAVITZ: I wasn't the one who used the
12 word first.

13 MR. BOCOCC: I'm just trying to get the
14 question clear if you want all this detailed
15 information.

16 MR. KRAVITZ: That's fair.

17 BY MR. KRAVITZ:

18 Q Mr. Iorio, when you used the word
19 "obstruct" earlier in your testimony, did you mean
20 obstruction of justice or something else?

21 A No, I go along with his meaning.

22 Q You meant just delay in investigation?

1 A Yes.

2 Q You didn't mean obstruction of justice in
3 any criminal or legal sense?

4 A I don't think -- I don't know. I'd have to
5 think about it.

6 MR. KRAVITZ: Mr. Bocock, would you be
7 willing to -- would you agree to have your client
8 answer that question in writing under oath so that we
9 can --

10 MR. BOCOCC: Yeah.

11 MR. BARTOLOMUCCI: Can't he answer it now?

12 MR. KRAVITZ: I don't want anyone to miss
13 their plane because of this. If you can answer it
14 now, that would be preferable.

15 MR. BOCOCC: I think probably Richard could
16 answer it in a brief way now. Why don't we see if
17 that answer is satisfactory to you.

18 BY MR. KRAVITZ:

19 Q Let's start with Mr. -- with Ms. Yanda.

20 What makes you believe that Julie Yanda either
21 obstructed or sought to obstruct any of the
22 investigations into the failure of Madison Guaranty

1 Savings & Loan Association?

2 A I would say the trying to hold up the
3 referrals from going out.

4 Q This is now the 1993 referrals?

5 A Yes. I would say the difficulties that the
6 FBI had in getting subpoena compliance. For whatever
7 reason, wanting Jean Lewis not to be the investigator
8 in charge of the investigation. Those would be the
9 three basic things.

10 Q Anything else?

11 A Off the top of my head, those are probably
12 the three major things.

13 Q As to all of these people, if you think of
14 additional reasons why you think that any of them
15 obstructed or sought to obstruct any of these
16 investigations, you're certainly free to send us a
17 letter including additional information. Do you
18 understand that?

19 A Uh-huh.

20 Q Yes?

21 A Yes.

22 MR. BARTOLOMUCCI: You will have a chance

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1 to review your deposition, as I understand it.

2 MR. BOCOCK: How about Hindes?

3 BY MR. KRAVITZ:

4 Q How about Tom Hindes, number two?

5 A I think signing the document to put us on
6 administrative leave without telling our supervisor
7 in Washington.

8 Q Anything else on Hindes?

9 A That's probably the major thing.

10 Q Anything else minor that you can think of?

11 A Not at the moment.

12 Q But if you come up with anything you will
13 let us know?

14 A Yes.

15 Q What about Ellen Kulka?

16 A Ellen Kulka and Andy Tomback --

17 Q You want to handle them both together?

18 A Yeah.

19 Q Okay.

20 A They're sort of at the management level of
21 the RTC, okay. I think their under-oath deposition,
22 trying to infer that we weren't wanted by the

1 independent counsel, that independent counsel didn't
2 trust us and things that supposedly Mark Tuohey said
3 that were clarified on the second day of the hearings
4 before the House.

5 I think that showed an attempt to kill the
6 messenger. The message has already gone, but to try
7 to destroy the messenger.

8 Q Now, you're referring to testimony that
9 Ms. Kulka offered the services of Ms. Lewis to the
10 independent counsel's office and according to
11 Ms. Kulka, Mark Tuohey said "are you kidding" or
12 something like that?

13 A Well, there's two different situations
14 here. One of them is between Tomback and Tuohey and
15 another one was in a letter to Mr. Starr, two
16 different situations. In both situations Mr. Tuohey
17 and Mr. Starr denied the inference that was made by
18 Ms. Kulka and Mr. Tomback.

19 Q How did the testimony of Ms. Kulka and
20 Mr. Tomback either obstruct or show an intention of
21 obstructing an investigation?

22 A They were reacting to the fact that we were

1 placed on administrative leave and questions had been
2 asked about us coming back to work the investigation,
3 and this was I think a method to demean the fact that
4 we might or might not be useful, by saying hey, they
5 didn't want them anyway, so it's no big deal. I
6 think they were trying to do something indirectly
7 that they didn't accomplish directly.

8 Q Anything else about Ms. Kulka on this
9 subject?

10 A Not right off the top of my head. I'll
11 have to think.

12 Q And anything else that Mr. Tomback did to
13 your knowledge that makes you conclude that he either
14 obstructed or sought to obstruct an investigation
15 into the failure of Madison Guaranty Savings & Loan?

16 A Not right off the top of my head.

17 Q And again, as with Yanda and Hindes, if you
18 think of anything about Kulka or Tomback, you will
19 let us know?

20 A Yes.

21
22

1 MR. KRAVITZ: Thank you very much. Go to
2 the airport.


3 (Whereupon, at 7:21 p.m., the deposition
4 was concluded.)
5

6 -----
7 L. RICHARD IORIO
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN BUNCH, the officer

before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.



Notary Public in and for the
District of Columbia

My Commission Expires MARCH 14, 1998

**DEPOSITION OF JOHN C. KEENEY
IN RE: S. RES. 120**

FRIDAY, OCTOBER 20, 1995

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER
DEVELOPMENT CORPORATION AND RELATED MATTERS,
Washington, DC.

Deposition of JOHN C. KEENEY, called for examination pursuant to notice of deposition, at 10:20 a.m. in Room 124 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, Esq.
Majority Deputy Special Counsel
RICHARD BEN-VENISTE, Esq.
Minority Special Counsel
U.S. Senate
Committee on Banking, Housing, and Urban Affairs
534 Dirksen Building
Washington, DC 20510
On behalf of the Committee.

PAUL J. FISHMAN, Esq.
ROSS WIENER, Esq.
U.S. Department of Justice
Tenth Street & Constitution Avenue, NW
Room 4114
Washington, DC 20530
On behalf of the Deponent.

ALSO PRESENT: WILLIAM CASTLE
ANDREW SCHAUER

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EXHIBITS

John C. Keeney DEPOSITION NUMBER	IDENTIFIED
Keeney Exhibits 1 and 2	3, 3205
Keeney Exhibit 3	12, 3453
Exhibit 007157	14, 3454
Exhibit 001484	17, 3479
Exhibit 016848	31, 3480
Exhibit 007632	42, 3481
Exhibit 007637	43, 3482
Keeney Exhibit 4	54, 3484
Exhibit 330	55, 3486
GRO Exhibit 718	66, 3487
Keeney Exhibit 5	68, 3488
Exhibit SWC GRO 571	72, 3490

P R O C E E D I N G S

(Keeney Exhibits 1 and 2 identified.)

Whereupon,

JOHN C. KEENEY

was called as a witness and, having first been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A John C. Keeney.

Q And your present business address?

A 10th and Constitution, Northwest, Washington, D.C.; Department of Justice.

Q What is your business phone number there?

A 514-2621.

Q And your present position at the Department of Justice?

A Deputy Assistant Attorney General in the criminal division.

4

MR. FISHMAN: And --

THE WITNESS: At the moment I'm acting Assistant Attorney General.

BY MR. GICALE:

Q Once again, assuming a title.

A Once again.

Q Now, how long have you been in the deputy's position?

A Since '73.

Q Now, there have been various times since 1973 when you have been acting Assistant Attorney General, criminal division, but you retained the Deputy Assistant Attorney General title as well; correct?

A Yes.

Q Now, your most recent stint as acting Assistant Attorney General for the criminal division, when did the most recent stint begin?

A Before this one.

Q "This one," when did this --

A This began when Joanne Harris left on August 29.

1 Q Of '95?

2 A Yes.

3 Q To the present?

4 A Uh-huh.

5 Q And when did you serve as acting Assistant
6 Attorney General in charge of the criminal division
7 prior to that?

8 A From January 21st, '93 until sometime in
9 November 1993.

10 MR. FISHMAN: Off the record for a second.

11 (Discussion off the record.)

12 BY MR. GICALE:

13 Q You didn't serve as acting Assistant
14 Attorney General for the criminal division between
15 November 1993 and August 29, 1995; correct?

16 A Give me the dates again.

17 Q Between November 1993 and August 29, 1995,
18 you did not serve as acting Assistant Attorney
19 General of the criminal division?

20 A Joanne Harris came in in November. She was
21 sworn in.

22 Q She stayed there until August of 1995 when

1 you assumed the position again?

2 A Yes.

3 Q Are you aware -- let me just go back a
4 second. This deposition is being conducted pursuant
5 to Senate Resolution 120. The resolution establishes
6 a special committee administered by the Banking
7 Committee to conduct an investigation involving
8 Whitewater Development Corporation, Madison Guaranty
9 Savings & Loan Association, Capital Management
10 Services, Inc., the Arkansas Development Finance
11 Authority and other related matters.

12 Section 1(b)2(c) of Senate Resolution 120
13 authorizes investigation and public hearings into
14 whether the Department of Justice has improperly
15 handled RTC criminal referrals relating to Madison
16 Guaranty Savings & Loan Association or Whitewater
17 Development Corporation. This will be the focus of
18 today's deposition.

19 A I understand that.

20 Q Now, you were requested to testify, I
21 believe, on October 5th of this year. This
22 deposition is in advance of a public hearing to be

1 held either later in October or November of this
2 year, and it is possible that you may be requested to
3 testify at that hearing. We will be asking you a
4 series of questions. You are testifying under oath.
5 If you don't understand a question, let us know and
6 we will rephrase it.

7 The stenographer will prepare a record of
8 questions and answers. The deposition will be
9 treated as committee confidential until the
10 commencement of the hearings.

11 Prior to the hearings, you will receive a
12 letter from the committee telling you that you may
13 come to the Senate to review the transcript of your
14 deposition and make notes of any corrections for
15 transcription on an errata sheet.

16 If you are called to testify at a public
17 hearing, you will be permitted to have a copy of your
18 deposition transcript four days in advance of your
19 testimony. You may be represented by counsel.
20 Objections to the form of the questions will be noted
21 for the record. Counsel may object on grounds of
22 privilege or relevance. The committee chairman may

1 rule on objections where the witness refuses to
2 answer a question.

3 Do you have any questions at this point?

4 A No.

5 Q Now, are you aware of the fact that the
6 committee, the Banking Committee has submitted a
7 document request to the Department of Justice with
8 respect to this investigation and has requested that
9 the Department of Justice produce documents related
10 to this investigation?

11 A Yes.

12 Q And did you search for responsive
13 documents, notes, reports and memoranda pursuant to
14 that request?

15 A I did.

16 Q Have all responsive documents been produced
17 that you are aware of?

18 A That I'm aware of, yes.

19 Q Did you speak to anyone other than
20 Mr. Fishman prior to your deposition today with
21 respect to the substance of your testimony?

22 A No, not really. I looked at a chronology

1 which was prepared by one of our people. That upsets
2 Mr. Fishman a little bit.

3 Q A chronology prepared by whom?

4 A By Allen Carver.

5 Q When did you review that?

6 A Yesterday.

7 Q Did you have a conversation with Mr. Carver
8 about that?

9 A No. I just asked him about it.

10 Q And he sent it over. Is that the extent of
11 your preparation or review of any documents that
12 anyone has used prior to today?

13 A I reviewed documents, a couple documents he
14 attached, short summaries of things like the original
15 referral.

16 Q Copies of the referral itself or summaries?

17 A Summaries.

18 Q That he had prepared?

19 A Or somebody prepared for him, I don't
20 know.

21 Q Was this something you had requested him to
22 prepare for you?

10

1 A No, I did not. He said he had them and do
2 you want it, and I said send it over.

3 MR. GICALE: Have we received -- I was not
4 present at Mr. Carver's deposition.

5 MR. FISHMAN: The documents were marked and
6 received in evidence in Mr. Carver's deposition.

7 BY MR. GICALE:

8 Q Is there any other conversation or
9 documents you have reviewed?

10 A There may have been mention of somebody
11 testifying, but that's about it. As you know, I
12 testified in the House.

13 Q That's right. I'm going to get to that
14 right now.

15 Now, Mr. Keeney, you previously were
16 requested to appear for a deposition before the
17 Committee on Banking and Financial Services, U.S.
18 House of Representatives. You testified on
19 Wednesday, September 13, 1995 and Thursday, September
20 14, 1995 under oath in the matter of Madison Guaranty
21 Savings & Loan; is that correct?

22 A Correct.

1 Q Now, I'm going to show you what is marked
2 for identification as Exhibits 1 and 2, which are
3 copies of the transcripts of those depositions on
4 those respective dates. Have you had an opportunity
5 to review your deposition transcripts for those
6 dates?

7 A I have a copy and I did look at them, yes.

8 Q And do those deposition transcripts
9 accurately -- are they a true and accurate reflection
10 of your testimony on that date?

11 A There are no major errors in it. I can't
12 say that I agree with everything the way it is
13 articulated.

14 MR. FISHMAN: I think the record should be
15 clear that Mr. Keeney received a copy of this
16 deposition only very recently and as the committee
17 knows, the Department of Justice was furnished the
18 transcripts by the House Banking Committee, I believe
19 within the last week or 10 days.

20 But none of the witnesses who were deposed
21 within the last month have had a chance to review
22 their testimony for errata, and no errata sheets have

12

1 yet been prepared or submitted to the House Banking
2 Committee.

3 MR. GICALE: It is my understanding they
4 will be submitted sometime within 30 days; correct?

5 MR. FISHMAN: Yes. When they are, they
6 will be submitted to this committee as well.

7 BY MR. GICALE:

8 Q Mr. Keeney, you will be submitting a copy
9 of your errata sheet to this committee which we will
10 then mark as Exhibit Number 3.

11 A Of this testimony?

12 Q Yes.

13 MR. FISHMAN: He will have the opportunity
14 to submit an errata sheet for that deposition
15 transcript and this one as well.

16 MR. GICALE: Correct.

17 THE WITNESS: Are you requiring that? I
18 don't feel like going back through this. The errors
19 that I found in there are not that material to me.

20 BY MR. GICALE:

21 Q One thing is I would ask how material the
22 errors were.

1 A I'm telling you now there are no
2 significant errors.

3 Q I guess for sake of completeness, I believe
4 that you should review this and submit it. You are
5 required to submit it anyway.

6 MR. BEN-VENISTE: He is not required to
7 submit an errata sheet. If he wants to submit one,
8 he can.

9 MR. GICALE: We would request you do so,
10 for the sake of completeness.

11 MR. BEN-VENISTE: I don't know who the "we"
12 refers to. It doesn't refer to me.

13 BY MR. GICALE:

14 Q The majority would request that you do
15 that. Do you understand?

16 A I understand.

17 Q Now, I know you were questioned extensively
18 with respect to a number of areas in terms of the
19 investigation of Madison Guaranty and the Hale
20 matter. I would like to direct your attention to
21 when you first were involved in this case, and this
22 is with respect to criminal referral C0004.

1 That referral was received in the
2 department sometime in -- it was received at the U.S.
3 Attorney's Office in September of 1992; is that
4 correct?

5 A I think that's correct.

6 Q And the department was notified sometime in
7 October of 1992; correct?

8 A Yes.

9 Q Did you ever receive copy of that referral,
10 C0004?

11 A It passed through over my desk, yes.

12 Q Showing you what is marked for
13 identification as 007157. This is a note I believe
14 to you dated October 9, 1992.

15 (Exhibit 007157 identified.)

16 THE WITNESS: Yes.

17 BY MR. GICALE:

18 Q Who was this from again?

19 A Robert Mueller, the Assistant Attorney
20 General of criminal at the time.

21 Q Attached to this note is a copy of a
22 routing slip --

- 1 A It is an urgent report.
2 Q An urgent report from --
3 A From Lawrence McWhorter, the Executive
4 Office for United States Attorneys.
5 Q That's dated when?
6 A October 7, 1992.
7 Q Is this when you first would have learned
8 about the criminal referral C0004?
9 A I believe so, yes.
10 Q Did you have a discussion with Mueller
11 about this?
12 A I must have, if he told me he wanted to
13 discuss it, I would have discussed it with him.
14 Q Do you remember any details about that
15 conversation at all?
16 A I do not.
17 Q Do you recall whether or not the
18 conversation was with anyone else other than
19 Mr. Mueller?
20 A I do not.
21 Q Do you recall whether the FBI perhaps
22 participated or Mr. Raphaelson?
-

- 1 A I do not.
2 Q Now, the next time that you had anything to
3 do with this referral I believe was sometime in
4 February or March of 1993; is that correct?
5 A Well, I'm not sure. I would have received
6 the referral, which I think I did, and I would have
7 sent it over for review to the fraud section. I
8 assume I did. I don't know.
9 Q In October you mean?
10 A Yes.
11 Q When you say you "sent it over there for
12 review" --
13 MR. FISHMAN: He said he assumed he did.
14 BY MR. GICALE:
15 Q Do you recall whether or not you received
16 any memorandum with respect to the review in 1992?
17 A No, I don't believe I did.
18 Q Did there come a point in time in February
19 when you received a memorandum from Douglas Frazier
20 with respect to the recusal of the U.S. Attorney's
21 Office in the Eastern District of Arkansas with
22 respect to this referral? I'm going to show you what

1 is marked for identification as 001484.

2 (Exhibit 001484 identified.)

3 (Witness examined the document.)

4 THE WITNESS: What is the question? Did I
5 see it?

6 BY MR. GICALE:

7 Q Yes.

8 A Yes.

9 Q That would have been dated February 18,
10 1993, a memorandum to you from Douglas Frazier asking
11 you for your review and recommendation; correct?

12 A Yes.

13 Q Between the time you received the referral
14 in October of 1992 and this memorandum, do you recall
15 any discussions that you had with anybody in the
16 criminal division about that referral?

17 A I had a discussion with Larry Urgenson, who
18 was then acting Deputy AG.

19 Q When did that discussion occur?

20 A It occurred at or about the time we sent
21 the memorandum back to Frazier.

22 Q But prior to that, prior to receiving this

18

1 memorandum from Frazier, February 18, 1993, prior to
2 receiving this, but after receiving the note from
3 Mr. Mueller in October of 1992, did you have any
4 discussions with respect to the criminal referral
5 C0004?

6 A I don't recall any discussions.

7 Q Now, when you received the request from
8 Mr. Frazier in February of 1993, was Mr. Hubbell
9 working in the Department of Justice?

10 A February?

11 Q February of 1993.

12 A Yes.

13 Q When did he come into the department?

14 A I don't know exactly when he came in. But
15 he was there at or about that time, yes.

16 Q It was shortly after the Inauguration, if
17 you recall?

18 A Shortly after the Inauguration.

19 Q In what capacity did he come into the
20 office?

21 A He was an advisor consultant, special
22 assistant to the acting Attorney General, Stu

1 Gerson. I don't know what his title was.

2 Q What were his responsibilities at that
3 time?

4 A What I know about his responsibilities is
5 that Gerson called him in on some matters.

6 Q Were they defined in any way in a
7 memorandum or some meeting or something in the
8 department?

9 A Not to my knowledge.

10 Q In late January and February and March,
11 what kind of contact, what was the nature of your
12 contact with Mr. Hubbell during that time period,
13 '93?

14 A I had contact with respect to -- I had
15 contact with him with respect to the Ford prosecution
16 in Memphis, Tennessee, and with respect to Race Horse
17 Hanes. I believe there was some contact -- I'm not
18 positive, with respect to the Durenberger
19 prosecution, Senator Durenberger.

20 I had contact with him once when some
21 counsel from Texas came in and wanted to confer with
22 him with respect to a case. I sat in on that. One

20

1 of the counsel I remember was -- I don't recall what
2 the investigation was.

3 Q And the other contact with him during that
4 time period?

5 A I can't recall. I can't recall specifics,
6 any other contact.

7 Q For instance, with respect to the Ford
8 case --

9 MR. BEN-VENISTE: I have to object to
10 getting into other cases. If there is any relevance
11 to this, it is whether Mr. Hubbell was somehow
12 involved in the matter involving Capital Management
13 or Madison Guaranty.

14 I really have to object to a wasteful
15 excursion of resources into contact between
16 Mr. Keeney and Mr. Hubbell on other Department of
17 Justice cases.

18 BY MR. GICALE:

19 Q I think the relationship of Mr. Keeney to
20 Mr. Hubbell and how they interacted during this time
21 period is relevant.

22 MR. BEN-VENISTE: Relevant to what?

1 BY MR. GICALE:

2 Q Is relevant to how this is handled. For
3 instance, a memorandum was in the department for a
4 period of time, and I think it is fair to inquire
5 into the process and how the department was working
6 and what Mr. Hubbell's responsibilities were at that
7 time.

8 MR. BEN-VENISTE: Whether they discussed
9 the Ford matter or not, if you want to ask whether
10 Mr. Hubbell saw some document as far as Mr. Keeney
11 knows or whether Mr. Keeney sent it to him, I suggest
12 you should ask him that.

13 BY MR. GICALE:

14 Q I will ask him that. I want to ask him
15 about the process. I don't care about the
16 particulars of the case.

17 MR. FISHMAN: When you say you are going to
18 ask him about the process, I believe that you asked
19 him -- we can have the question read back. But
20 rather than do that, my suggestion is that the
21 question was phrased perhaps a little more broadly
22 than that.

1 Perhaps it could be phrased more narrowly
2 so as not to involve the substance of any discussions
3 between Mr. Keeney and Mr. Hubbell regarding the
4 substance of the Ford prosecution, which I do agree
5 would not be appropriate for this deposition.

6 MR. GICALE: I don't intend to get into the
7 substance of the conversations, just what was the
8 relationship.

9 BY MR. GICALE:

10 Q Was he asking you for advice with respect
11 to these prosecutions?

12 A With respect to the Race Horse Hanes thing,
13 he asked me to sit in, and he probably asked me what
14 we should do about it and I think my answer was
15 nothing.

16 Q With respect to the Ford matter, again, was
17 he asking you for advice on matters?

18 A It wasn't he that was asking. It was Stu
19 Gerson, who was the acting Attorney General. He
20 brought Web Hubbell into the meetings.

21 Q There were meetings and Hubbell sat in on
22 the meetings as an advisor to Gerson?

1 A Yes.

2 Q Would Mr. Hubbell direct you to do anything
3 as a result of these meetings?

4 A No.

5 Q Did you feel obligated to keep him informed
6 about these prosecutions as a result of these
7 meetings?

8 MR. BEN-VENISTE: What prosecutions?

9 BY MR. GICALE:

10 Q For the investigation.

11 MR. FISHMAN: I think it was long past the
12 investigation.

13 THE WITNESS: There was an indictment at
14 the time. The issue was a change-of-venue issue.
15 Whether I kept him advised, I just don't recall.

16 BY MR. GICALE:

17 Q With respect to the Durenberger matter, was
18 it the same sort of role? He was in an advisory role
19 to Mr. Gerson?

20 A Gerson was the decider with respect to
21 Durenberger.

22 Q At all times when you would meet on these

1 things, would Gerson be there as well as Hubbell?

2 A I believe so.

3 Q Now, showing you what is marked for
4 identification as 007039, this is a memorandum dated
5 March 19, 1993 from you signed by Laurence Urgenson
6 to Doug Frazier.

7 A Yes.

8 Q Regarding the recusal issue by the U.S.
9 Attorney's Office for the Eastern District of
10 Arkansas.

11 I believe you previously testified that you
12 did have a discussion with Mr. Urgenson about this;
13 correct?

14 A I did.

15 Q But that you did not review the memorandum
16 at that time?

17 A I have no recollection of having reviewed
18 the memorandum at that time.

19 Q I assume, as a result of your discussion,
20 you agreed to have this memorandum forwarded, along
21 with the attached Mark MacDougall memorandum to
22 Mr. Frazier?

1 A Yes.

2 Q Was there an agreement as to how this
3 memorandum and the other memorandum would be conveyed
4 to Mr. Frazier?

5 A I don't understand the question.

6 Q Did you agree to hand-deliver it? Did you
7 agree to send it through --

8 MR. BEN-VENISTE: What is the difference?
9 For gosh sakes.

10 THE WITNESS: That was Urgenson's call. I
11 didn't sign this. I knew it was going. It was
12 discussed with me. How it went from there, I don't
13 know.

14 BY MR. GICALE:

15 Q You have no idea.

16 A I can guess. It went through the Executive
17 Secretariat, which was the normal procedure.

18 Q Who in the office would have handled the
19 paperwork?

20 A I don't know. It was Urgenson's office,
21 not mine.

22 Q Your office is adjacent?

1 A It is down the hall.

2 Q Mr. Hubbell's office at the time, where was
3 that located?

4 A I think it was on the fifth floor in the
5 Attorney General's suite.

6 Q Would he have had access to this memorandum
7 when it was forwarded to Mr. Frazier?

8 A Not normally.

9 Q When he came into the department in late
10 January, early February of 1993, did you brief him
11 with respect to criminal matters of importance in the
12 department?

13 A In general, I don't think so. But as I
14 say, I did brief him in the presence of Gerson
15 usually and I think almost always with respect to
16 matters that they inquired about. The inquiries at
17 that point were coming from Gerson rather than
18 Hubbell.

19 I think the only -- the only thing I can
20 recall Hubbell contacting me directly on was I
21 questioned him whether or not he was entitled to have
22 access to certain personnel files. That's the only

1 thing I can recall him specifically asking for advice
2 on.

3 Q But when he came into the department, did
4 you brief anyone in terms of the status of criminal
5 cases?

6 MR. FISHMAN: When he came in or when
7 anyone else came in?

8 MR. GICALE: When Hubbell came in.

9 THE WITNESS: I didn't brief Hubbell.
10 Gerson, whatever Gerson -- I don't recall briefing
11 Gerson across the board on criminal matters either.
12 Usually it was reactive to a particular situation
13 when they, usually it was Gerson.

14 BY MR. GICALE:

15 Q Do you know who was controlling the
16 correspondence that was going to Doug Frazier's
17 office in that time period, March of 1993.

18 MR. FISHMAN: What do you mean by
19 "controlling"?

20 THE WITNESS: I don't understand that.

21 BY MR. GICALE:

22 Q Who was receiving it and delivering it to

1 people.

2 A I don't know. I'm not in charge of the
3 messenger service. We have an Executive Secretariat
4 so that the material going out of the criminal
5 division, the so-called controlled material going
6 upstairs to the deputy or Attorney General's office
7 goes to what we call the Executive Secretariat, and
8 they control the distribution of the correspondence.

9 Q Are there ever times when things are of
10 such significance that sometimes, in addition to
11 perhaps routing things through Executive Secretariat,
12 things are hand-delivered to the Attorney General?

13 A Yes.

14 Q Did you consider this a significant matter?

15 A I didn't have this delivered. I don't
16 think you are clear on that. Urgenson discussed this
17 with me. The memorandum was signed out by Urgenson.
18 I had nothing to do with the transmission of the
19 document.

20 Q I understand that. And you didn't
21 discuss -- did you discuss with Urgenson whether it
22 was significant enough to merit hand-carrying it up

1 to the Attorney General's office?

2 A I did not. That was within Urgenson's
3 discretion.

4 Q Was it your practice at that point in time,
5 if something was of a significant nature, to
6 hand-carry documents up to the Attorney General's
7 office?

8 A We do that on occasion. Within that
9 period, during that period, we would have done it on
10 occasion. The usual practice is to send that sort of
11 material through the Executive Secretariat.

12 Q Did you think this matter was significant
13 enough that it should have been hand-delivered by
14 yourself up to the Attorney General's office?

15 A I didn't make any decisions with respect to
16 how it was going to be transmitted. I told you
17 that. That was Urgenson's call. How he did it, I
18 didn't get involved in.

19 Q Once you learned that Urgenson was going to
20 send it up, did you brief Mr. Gerson on the fact that
21 it was being sent up to Mr. Frazier?

22 A I have no recollection of any conversation

30

1 with Gerson with respect to this matter.

2 Q And with respect to Mr. Hubbell, did you
3 have any conversation with him with respect to this
4 matter?

5 A I did not. We can shortcut a lot of things
6 here. I never had any conversations with Hubbell
7 with respect to Whitewater or anything
8 Whitewater-related.

9 MR. BEN-VENISTE: That seemed to be covered
10 in the prior deposition. Maybe I am mistaken.

11 BY MR. GICALE:

12 Q Now, Mr. Hubbell did not recuse himself
13 from Madison, matters relating to Madison Guaranty or
14 the McDougals until November of 1993; correct?

15 A I don't know whether that is correct.
16 There is a written recusal, but I don't know the date
17 of it.

18 Q You received a copy of it; correct?

19 A I knew about it at the time, yes. I don't
20 remember the date.

21 Q Showing you what is marked for
22 identification as 016848, a memorandum dated November

1 3, 1993 from Web Hubbell regarding recusal.

2 A Yes.

3 (Exhibit 016848 identified.)

4 BY MR. GICALE:

5 Q Does this accurately reflect the memorandum
6 you received with respect to Mr. Hubbell's recusal in
7 November 1993?

8 A Yes.

9 Q You indicated you did not have any
10 conversations with Mr. Hubbell with respect to
11 Whitewater or Madison Guaranty.

12 MR. BEN-VENISTE: Several times.

13 BY MR. GICALE:

14 Q Several times --

15 MR. FISHMAN: Several times he indicated
16 that. I don't think he had.

17 BY MR. GICALE:

18 Q Why did you not have? Why is it you did
19 not have conversations with him with respect to it?

20 A Well, the subject was one never raised by
21 him and because of the relationship with the
22 Clintons, it is not the type of thing that I would

1 have brought to Web Hubbell's attention, because of
2 his relationship with the Clintons.

3 Q Was that your opinion in January and
4 February of 1993?

5 MR. FISHMAN: I believe in January
6 Mr. Hubbell wasn't yet --

7 MR. GICALE: The end of January 1993 I
8 believe he was.

9 Right, Mr. Fishman?

10 MR. FISHMAN: I'm trying to narrow the
11 focus of your question, Mr. Gicale.

12 BY MR. GICALE:

13 Q Was that your opinion at the end of January
14 1993 and February and March of 1993?

15 A My opinion was that because of the
16 relationship between Web Hubbell and the Clintons and
17 his general relationship with the administration,
18 that matters relating in any way that touched on
19 Whitewater or the Clintons would not be sent or
20 discussed with Web Hubbell.

21 Q Was that a decision you arrived at on your
22 own or did you have discussions with people in the

1 department with respect to that?

2 A I don't know that I ever discussed it with
3 anybody. It is a decision I made on my own.

4 Q Now, do you know why Mr. Hubbell waited
5 until November 3, 1993 to recuse himself from these
6 matters?

7 A I have no idea.

8 MR. FISHMAN: To write the memo I think is
9 what you mean. I think the memo states he had prior
10 conversations. I don't know whether he did or not.

11 BY MR. GICALE:

12 Q But it is effective November 3, 1993.

13 MR. FISHMAN: I'm simply objecting to the
14 form of your question.

15 BY MR. GICALE:

16 Q Do you know if anyone else in the
17 department took the same position with respect to
18 matters relating to Whitewater, Madison Guaranty and
19 Mr. Hubbell?

20 A I don't know.

21 Q Directing your attention to --

22 A Just to finish on that question. I would

1 assume that people in the department took the same
2 position, anybody in a responsible position in the
3 department would take that position, yes.

4 Q Do you know of anybody specifically that
5 discussed it with him?

6 A No. With him?

7 Q Yes.

8 A I don't know. He frequently sought advice
9 on matters I got from David Margolis. I don't know
10 whether he talked to him on that or not. Margolis is
11 reflected as a contact person in there.

12 Q I will move forward to August and September
13 of 1993.

14 A Yes.

15 Q And just briefly before that. Do you know
16 when Mr. Hubbell was ultimately confirmed, do you
17 recall when that was, as associate?

18 A I do not.

19 Q Did there come a point in time when his
20 duties were just civil in nature and he was not
21 involved in criminal matters?

22 A Yes. After he was confirmed, yes.

1 Q Now, these cases that you earlier
2 described, Ford and Durenberger and the matter with
3 Hanes, they arose before he was confirmed in his
4 associate's position?

5 A Yes.

6 Q Did you have any other dealings with him
7 with respect to criminal matters after he headed up
8 the civil area in the department?

9 A I recall one situation where he called me
10 up to his office and he had an allegation of a
11 problem internally that he wanted us in the criminal
12 division to look at and we did.

13 Q But other than that, do you recall any
14 other instance?

15 A I can't recall any, but you know, while I
16 was acting Assistant AG, I was in a meeting, in
17 meetings from time to time where Hubbell would be
18 present. That's about it. I didn't have a great
19 deal of contact with him.

20 Q I believe you testified in the House that
21 you first learned of allegations with respect to the
22 Clintons or Mr. Clinton in August or September of

1 1993, with respect to the Hale investigation; is that
2 correct?

3 A I think that's right.

4 Q In the House deposition, you indicated that
5 you obtained the information either from assistants
6 and/or news articles.

7 A I think that is right.

8 Q And then you also indicated that you had
9 some discussion with Paula Casey "when she came on
10 board" with respect to those allegations.

11 A Yes.

12 Q Now, as a point of reference, you had a
13 meeting on September 20th, 1993 at 9:00 in the
14 morning with Irv Nathan and some others,
15 Mr. Gangloff, and I believe Mr. McDowell and some
16 others wherein Mr. Nathan indicated a source had come
17 to him with respect to some information with respect
18 to allegations that Hale was making against President
19 Clinton; correct?

20 A Yes.

21 Q But you had information with respect to
22 those allegations prior to that September 20, 1993

1 meeting; is that correct?

2 A To pinpoint the date, I really can't do
3 it. I was aware there were newspaper articles.
4 There were New York Times articles and I think there
5 was a Washington Post article. I may or may not have
6 talked to the assistants before that time. I just
7 don't recall. But I did talk to the assistants.

8 Q When you are referring to "the assistants,"
9 are you referring to the assistant U.S. Attorneys in
10 the district at that point in time, Mr. Johnson and
11 Mr. Jackson?

12 A Yes.

13 Q You would have talked to them yourself?

14 A I did talk to them, yes. I talked to one
15 or both of them on one or more occasions during this
16 general period.

17 Q Do you know if it was before the 20th of
18 1993?

19 A I do not.

20 Q When you indicated in your testimony that
21 you talked with Paula Casey when she came on board,
22 she came on board initially in an acting capacity in

1 August of 1993. Do you recall that?

2 A No. I talked to Paula Casey after the
3 Gerth articles -- I think that is his name, of The
4 Times -- and it was with respect to Hale. It is in
5 that September time period, but I don't know exactly
6 when. I think you have documents that would
7 establish the date.

8 Q Okay, but again, referencing your testimony
9 in the House, there is some testimony with respect to
10 the meeting on September 20th and some phone calls
11 with Ms. Casey.

12 A Right.

13 Q But there is also some testimony in there
14 wherein you state that you had some information with
15 respect to it from either assistants and/or news
16 articles in August and/or September 1993 when
17 Ms. Casey came on board.

18 A Uh-huh.

19 Q What I wanted to try to clarify is whether
20 or not you meant that maybe you had talked to
21 Ms. Casey in August when she came on board with
22 respect to some general allegations and then talked

1 to her again later with respect to more specific
2 allegations in September?

3 A I can't help you on a specific date, no.

4 Q Were you aware of the fact -- did Ms. Casey
5 ever tell you that Fletcher Jackson -- and you
6 remember him?

7 A Yes.

8 Q The assistant handling the Hale case in
9 Arkansas told her in August that the Hale
10 investigation could lead to matters in the first
11 referral?

12 A I'm sorry. You are losing me there. Could
13 you restate that.

14 Q Did Ms. Casey tell you sometime in
15 September of 1993 that when Fletcher Jackson briefed
16 her on the Hale matter that he told her that the Hale
17 investigation might lead to matters in the first
18 criminal referral, C0004?

19 A That sounds vaguely familiar, yes.

20 Q Do you know when she told you that?

21 A I can't help you on the dates. I talked to
22 Paula Casey at least once, maybe twice. But they

1 were limited conversations with her.

2 The conversations that I had with her were
3 with respect to -- I had them earlier with the
4 assistant on negotiations of an agreement with Hale.
5 They told me what their position was with it, and I
6 agreed with their position, namely, that no deal
7 would be made with Hale until we had a lawyer's
8 proffer and were able to evaluate it.

9 Q Is it fair to say that on September 20,
10 when Mr. Nathan -- strike that.

11 Prior to the September 20, 1993 meeting,
12 Mr. Nathan called you up that weekend or something to
13 let you know he had some information?

14 A I don't know how he communicated, but he
15 did communicate that he had a source that provided
16 information with respect to what Hale could provide
17 with respect to President Clinton and McDougal, I
18 believe.

19 Q Prior to receiving that information from
20 Nathan, were you aware of these allegations?

21 A I might have been. I think I probably
22 was. I think the newspaper articles were out by the

1 time Nathan talked to me on this.

2 Q There was a newspaper article on September
3 23rd about the time of the indictment of Hale;
4 correct?

5 A My guess would be there were newspaper
6 articles earlier.

7 Q Prior to that?

8 A Yes.

9 Q Had Fletcher Jackson informed you in August
10 of 1993 whether or not Hale was making some sort of
11 general allegations against the President?

12 A He did, but I can't give you the time on
13 that. He did, yes.

14 Q And you had a conversation with him
15 directly, not through Mr. McDowell or Mr. Carver?

16 A I had direct conversations with Jackson.
17 There were two assistants. I think I had one or more
18 conversations with one or maybe both of them. It was
19 all with respect to the plea, the plea and any sort
20 of bargaining that would be done with Hale.

21 Q On September 20th, you asked somebody from
22 that office in Arkansas to fax you copies of the

1 letters with respect to the plea discussions;
2 correct?

3 A I might well have. It would be what I
4 normally do. I don't recall there being anything in
5 writing with respect to that. If you have something
6 to refresh my recollection, I would appreciate it.

7 There were oral discussions with this
8 lawyer, and the lawyer wanted either a misdemeanor or
9 a complete pass and would not give them anything in
10 the way of a proffer as to what Hale could testify
11 to, which we found objectionable.

12 Q Showing you what is marked for
13 identification as 007632, a letter dated September
14 20, 1993 to Paula Casey from Randy Coleman.

15 Is this one of the letters that you
16 received, you asked the U.S. Attorney's Office in
17 Little Rock to send to you?

18 (Exhibit 007632 identified.)

19 MR. FISHMAN: I think he testified he
20 didn't remember whether he had asked or not, so I
21 object to the form of the question.

22 (Witness examined the document.)

1 BY MR. GICALE:

2 Q Do you recall whether this is the letter
3 you received at that time or a copy of the letter
4 that you received at that time?

5 A I probably received it, but I have no
6 specific recollection of it.

7 Q Showing you what is marked for
8 identification as 007637, another letter dated
9 September 20, 1993, but this one is to Randy Coleman
10 from Michael Johnson.

11 (Exhibit 007637 identified.)

12 BY MR. GICALE:

13 Q Do you recall whether you received a copy
14 of this on September 20, 1993?

15 (Witness examined the document.)

16 A I believe I did, yes.

17 Q Now, when you talked to Fletcher Jackson
18 and you are not certain of the time --

19 A I'm not certain of the time within a matter
20 of days. I'm certain of the time within a matter of
21 weeks. It is all during that end of August-September
22 period.

1 Q Your recollection is that you think by the
2 end of August --

3 A My recollection is now and was previously
4 that I had conversations with him during this general
5 August-September period, but I don't know exactly
6 when.

7 Q Did you ask him to submit any updates,
8 memos to you prior to September 20th apprising you of
9 the status of these negotiations with Mr. Coleman?

10 MR. FISHMAN: Maybe Mr. Keeney isn't making
11 himself clear. He doesn't remember. He has
12 testified now, I think, 10 times. He doesn't
13 remember whether things happened before or after
14 September 20th.

15 MR. GICALE: That isn't what he just said.

16 THE WITNESS: If that isn't what I said,
17 let me repeat it. I had these conversations during
18 the August-September time period. I can't state with
19 any precision that I had a conversation with anybody
20 in particular before September 20th or after
21 September 20th. I had the conversation, absolutely.

22 BY MR. GICALE:

1 Q Didn't you indicate, didn't you testify
2 that you had conversations with respect to Fletcher
3 Jackson -- or you knew about these general
4 allegations with respect to President Clinton prior
5 to your conversation with Mr. Nathan on September
6 20th, 1993?

7 A I think that's correct. I'm not sure what
8 the source was, whether it was one of the assistants
9 or whether it was Arkansas newspaper articles or
10 whether it was The New York Times or whether it was
11 The Washington Post. I'm having difficulty pinning
12 this down as to a precise date, but I'm giving you
13 the time period.

14 MR. BEN-VENISTE: Please show 5111 to
15 Mr. Keeney. That may help refresh his recollection.

16 BY MR. GICALE:

17 Q Since I don't have them in numerical
18 sequence, what date? September 23rd.

19 MR. BEN-VENISTE: The third page of that.

20 Off the record.

21 (Discussion off the record.)

22 BY MR. GICALE:

1 Q With respect to your conversations with
2 Paula Casey about her being recused from the
3 prosecution of Hale and the other referrals, you
4 testified in the House that she indicated that she
5 knew the Clintons, she had some kind of relationship
6 with the Clintons, some personal relationship, went
7 to law school, some other things, worked on the
8 campaign. You testified that she knew the Tuckers as
9 well.

10 Did she indicate to you whether or not she
11 knew Seth Ward or Stephen Smith?

12 A No.

13 Q You don't know?

14 A No, I do not know. In the conversation
15 with her, my focus was on the fact that she was an
16 appointee as United States Attorney for President
17 Clinton. That was my basis for suggesting that she
18 should recuse herself, because of the appearance
19 problem.

20 I learned subsequently, maybe it was in
21 this conversation, that she had a very close
22 relationship with Governor Tucker and with his wife

1 and that her husband had some sort of a connection
2 with the administration. I don't know when I found
3 that out.

4 My primary focus on the recusal was because
5 of her position, because of her being appointed by
6 President Clinton.

7 Q Did you at any time subsequent learn that
8 she had some relationship, knew Seth Ward or Stephen
9 Smith?

10 A Who is Stephen Smith?

11 Q Just answer the question.

12 A The answer is no. I don't know.

13 Q Now, when you talked to her on September
14 20th, 1993, did she tell you what she knew about the
15 Hale allegations at that point in time?

16 A Well, what we discussed was the fact that
17 Hale was talking to the press and his attorney was
18 talking to the press with respect to Hale being
19 present with President Clinton and with McDougal and
20 they were putting pressure on him to make some sort
21 of a loan. That was the subject of the discussion.

22 Q Was she aware of that specific information

1 at that point in time?

2 A I believe so.

3 Q She conveyed that to you at that time?

4 A Well, I don't recall the details of the
5 discussion. But the whole point of my recusal
6 suggestion was that this Judge Hale was stating that
7 he had information with respect to what could be
8 improper activity or conduct on the part of Clinton.
9 She was a Clinton presidential appointee, and I
10 didn't think that she should be involved in the
11 matter.

12 Q The point of my question is did she have
13 specific detailed knowledge -- earlier
14 Mr. Ben-Veniste referred to an exhibit. I will pull
15 it out here.

16 MR. BEN-VENISTE: 5111.

17 BY MR. GICALE:

18 Q I have it marked differently.

19 MR. BEN-VENISTE: It is also GEN 777.

20 MR. GICALE: I have GEN 0000191.

21 BY MR. GICALE:

22 Q It is dated September 21, 1993, to the

1 director of the FBI from John Keeney. I will give
2 you one that is not marked up.

3 Do you recall this memorandum, Mr. Keeney?

4 A Let me read it first, okay.

5 (Witness examined the document.)

6 I remember this, yes.

7 Q At that point in time, you were reviewing
8 some fairly detailed information received from two
9 different sources and trying to compare and contrast
10 the information to see what the similarities were and
11 the differences; correct?

12 A Noted the similarity of the Gerth articles
13 and the information that was coming from the
14 confidential source of Irv Nathan. We had some other
15 information, yes.

16 Q This information was fairly detailed, and
17 my question to you is with respect to your
18 conversation with Paula Casey on September 20, 1993,
19 did she indicate that she had this kind of detailed
20 information with respect to Hale's allegations, or
21 was her information more general in nature?

22 MR. BEN-VENISTE: I object to the form of

1 the question. If you are asking whether she read the
2 newspaper and saw it in the newspaper as opposed to
3 getting it in the proffer that she asked for, that's
4 one question.

5 But the basis of the information received
6 from some hearsay source is different than getting it
7 from Hale or his attorney, I would suggest.

8 BY MR. GICALE:

9 Q My first question is what information she
10 indicated she had. My second question would be where
11 she indicated she obtained it.

12 What information did she indicate she had?
13 How specific was it?

14 A She indicated a general awareness and
15 that's all. We did not get into details and
16 specifics. The primary burden of the conversation
17 was recusal. I don't know how much information she
18 had at that time. And I don't recall any detailed
19 discussion of the facts except the Hale allegation.

20 Q Now, did you have any conversation with her
21 with respect to the correspondence on the plea
22 agreement discussions that I showed you earlier, the

1 letters dated September 20th, 1993?

2 A Well --

3 MR. BEN-VENISTE: Read that back, please.

4 (The reporter read the record as requested.)

5 THE WITNESS: We had discussions with
6 respect to that subject matter. Did I ask her to
7 send me copies? I don't remember whether I asked her
8 or one of the assistants. But I did ask to be kept
9 informed of the status of those plea negotiations or
10 immunity negotiations or whatever you want to
11 characterize them as.

12 BY MR. GICALE:

13 Q Did you make it clear to her at that point
14 in time that if Mr. Coleman wanted to come to main
15 Justice to negotiate the plea, that she should tell
16 him, convey to him that he could do that?

17 A No. What I said was they indicated that
18 Coleman refused to make a proffer to the office in
19 Little Rock because he didn't trust them. I said if
20 he doesn't want to make the proffer there, he can
21 come to Washington and make the proffer to us.

22 Q Did you ask her to convey that to him?

1 A Yes.

2 Q Did you speak with Paula Casey about this
3 matter between September 20, 1993 and November 3,
4 1993, when she had the meeting with Mr. Heymann on
5 the recusal issue?

6 A I don't think so. I don't have any
7 recollection of that. I don't think so.

8 Q Now, at some point in time you learned that
9 the U.S. Attorney's Office had received copies of a
10 second set of referrals, nine additional referrals
11 from the RTC with respect to this matter.

12 A I learned that at some point, yes.

13 Q Do you recall whether or not you learned of
14 that in October of 1993?

15 A I don't recall.

16 Q At some point in time you also learned that
17 those additional referrals contained allegations with
18 respect to Mr. Tucker; is that correct?

19 A I believe so, yes.

20 Q Now, it wasn't until after November 3rd,
21 1993 that Ms. Casey recused herself; is that correct?

22 A It was sometime in November when she put in

1 a formal recusal letter.

2 Q Now, if she received these nine additional
3 referrals in October of 1993, did you think it was
4 appropriate for her to review them or make an
5 assessment on them before she recused herself from
6 these matters?

7 A Well, to the extent that they involved
8 Tucker, I think she should have recused herself,
9 yes.

10 Q Prior to reviewing and making an assessment
11 with respect to them?

12 A Yes. If she was aware of the fact that
13 there were allegations against Tucker and she was
14 close to Tucker, she should have recused herself.

15 Q And as early as September 20, 1993, you
16 indicated that she should recuse herself; correct?

17 A That she should recuse herself with respect
18 to the Hale matter and Whitewater in general, not
19 with respect to these additional referrals. The
20 additional referrals came later, as I recall.

21 Q Now, in August-September -- strike that.
22 From August 1993 through December 1993, did

1 Mr. Hubbell have any responsibility for criminal
2 matters in the Department of Justice?

3 A He didn't have any responsibility for
4 criminal division matters. Now, there was some
5 criminal jurisdiction in some other divisions which
6 he may have had contact with, but the criminal
7 division he didn't have any responsibility for.

8 MR. FISHMAN: Off the record.

9 (Discussion off the record.)

10 BY MR. GICALE:

11 Q Can you clarify Mr. Hubbell's
12 responsibilities in the criminal area?

13 A He had criminal responsibilities insofar as
14 the divisions that he supervised had criminal
15 responsibilities. Those would be the civil rights
16 division, the antitrust division, the tax division
17 and to a limited extent the civil division.

18 Q Showing you what is marked for
19 identification -- I guess we will have to mark it.

20 Off the record.

21 (Discussion off the record.)

22 (Keeney Exhibit 4 identified.)

1 BY MR. GICALE:

2 Q First of all, just to refer back to
3 September 20, 1993. On that date, first thing in the
4 morning you had this meeting with Mr. Nathan to go
5 over the information his source had given him;
6 correct?

7 A Which date?

8 Q September 20, 1993. That's not in this
9 document, I don't think. I have your notes of that
10 day, if that would help.

11 A It would help, yes.

12 Q I'm showing you what has been marked for
13 identification as 330. I believe this is a copy of
14 your notes on that particular date, September 20,
15 1993, although it is very difficult to read the
16 date.

17 (Exhibit 330 identified.)

18 (Witness examined the document.)

19 BY MR. GICALE:

20 Q Is that a copy of your notes of that date?

21 A Yes.

22 Q And I believe in your House testimony you

1 were shown copies of notes of a number of
2 individuals, Mr. McDowell's notes, Mr. Gangloff's
3 notes of the meeting with Mr. Nathan; is that
4 correct?

5 A I think I was shown some of Gangloff's.

6 Q In any event, you do recall having a
7 meeting first thing in the morning with Mr. Nathan to
8 go over his information; correct?

9 A I remember having a meeting with
10 Mr. Nathan. Whether it was first thing in the
11 morning I'm not sure.

12 Q And then at some subsequent time,
13 Mr. Nathan left you and Mr. McDowell and some others
14 to discuss what steps you would take next to further
15 this investigation; correct?

16 A It makes sense.

17 Q And then at some point in time you reached
18 out to Paula Casey in Arkansas; correct, on that
19 date?

20 A I talked to her on that date, yes. I
21 initiated the call.

22 Q You are reviewing Deposition Exhibit

1 Number 4.

2 A Okay.

3 Q This is a list of your phone log for
4 September 20, 1993; correct?

5 A Yes. Is there a question?

6 Q Not yet. Have you reviewed that
7 sufficiently so I can ask you some questions?

8 A Yes.

9 Q There is a time in and out, and next to the
10 name "Paula Casey" you have a call at 12:35 in the
11 time out slot and 2:25 in the time out slot. Would
12 that have been the time when you called Paula Casey?

13 A I guess so, uh-huh.

14 Q And the time in is when she returned your
15 call; is that how to explain that record?

16 A This is embarrassing. But I went over this
17 after I went to the House with my secretary. I
18 frankly --

19 Q Have no idea?

20 A Yes. I know the call was completed --

21 MR. FISHMAN: There also is a higher
22 reference on that page to Paula Casey also, but it is

1 not --

2 MR. GICALE: Right, at 12:10 and 2:25.

3 THE WITNESS: I talked to her. There is no
4 question about that.

5 MR. FISHMAN: Do you understand this -- off
6 the record.

7 (Discussion off the record.)

8 THE WITNESS: I did talk to the assistants,
9 and we tried to get her and she was off in a
10 conference somewhere.

11 MR. BEN-VENISTE: Unless there is some
12 theory that Keeney is involved in some coverup over
13 secretly discussing this with Paula Casey in a matter
14 that hasn't been revealed, what the hell do we care?

15 MR. GICALE: I would like to ask him some
16 questions with respect to this log.

17 BY MR. GICALE:

18 Q This log reflects the fact that you
19 attempted to call her and she returned some calls to
20 you on that date, and you previously talked to her
21 about the issue of the plea negotiations with
22 Mr. Hale.

1 A Right.

2 Q On the same date, Mr. Hubbell was calling
3 you. He called you apparently at 12:20 and 2:00,
4 calls out at 12:20 and 2:00, and calls in to you from
5 him at 9:10 in the morning and apparently 1:50 in the
6 afternoon and later on at I believe 3:05 in the
7 afternoon.

8 A Wasn't that a case of telephone tag?

9 Q I don't know. You tell me.

10 A That's the impression I got. I did talk to
11 him. You are talking about the redacted portion?

12 MR. FISHMAN: The record should reflect
13 that Mr. Gicale is looking at the phone logs and
14 Mr. Keeney is looking at his notes of that day.

15 THE WITNESS: Okay. Go ahead with your
16 question.

17 BY MR. GICALE:

18 Q Now, I was referring to the phone log.

19 MR. BEN-VENISTE: Can you just ask him if
20 the Hubbell calls had anything to do --

21 THE WITNESS: "Will call back" is on the
22 first call in the morning.

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1 BY MR. GICALE:

2 Q You have calls from Larry Potts, who was
3 involved in the investigation with respect to Hale;
4 correct?

5 A Correct.

6 Q You have calls from Paula Casey with
7 respect to the investigation?

8 A Uh-huh.

9 Q You have calls from Fred Verinder, who was
10 involved in the Hale investigation; correct?

11 A Yes.

12 Q Tom Kubic, involved in the Hale
13 investigation?

14 A Right.

15 MR. FISHMAN: So the record is complete,
16 redacted calls, the calls that have nothing to do
17 with the names requested by the committee have been
18 redacted.

19 The only calls when this document was
20 provided to the House and then to the Senate, it was
21 provided because the House of Representatives
22 identified particular names that it wanted

1 documented.

2 In other words, the House said please
3 provide all records of Mr. Keeney's telephone or
4 other contacts with anyone in the FBI and with anyone
5 in the Eastern District of Arkansas and with
6 Mr. Hubbell.

7 MR. GICALE: I understand.

8 MR. FISHMAN: By providing those records to
9 the House and the Senate, the Department of Justice
10 did not represent that it was attempting to discern
11 whether those calls had anything to do with the
12 subject of the committee's inquiry.

13 We were overinclusive, at the committee's
14 request. And the items redacted on this log are
15 phone calls between Mr. Keeney and other people, not
16 between him and other people whose names were
17 identified by the Committee on Banking and Financial
18 Services in the House of Representatives.

19 BY MR. GICALE:

20 Q In September of 1993, how frequently would
21 you talk to Web Hubbell?

22 A Infrequently.

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1 Q Would you talk -- by "infrequently," would
2 that be once a month, once a day? What do you mean
3 by that?

4 A Not once a day, no.

5 Q Would it be unusual for Mr. Hubbell to call
6 you three times in a given day in September of 1993?

7 A Yes.

8 MR. BEN-VENISTE: Didn't he just say they
9 were playing telephone tag?

10 MR. GICALE: He said he wasn't sure whether
11 they were playing telephone tag.

12 THE WITNESS: I think we were, yes.

13 BY MR. GICALE:

14 Q This would be an initial occurrence for him
15 to call you three times in a given day?

16 A I called him, as I recall. He knew what
17 this is. It is a personnel matter. He explained to
18 me -- the note here relates to the Hubbell call. We
19 didn't redact the whole thing. We just redacted the
20 name.

21 Q Now you are referring to your notes which
22 is document 330.

1 A That was a conversation with respect to a
2 personnel matter, and he explained to me how he got
3 into the personnel matter, and I had certain problems
4 with respect to the way the matter was being handled
5 and I discussed it with him. But it is a personnel
6 matter, and under the Privacy Act you protect the
7 individual.

8 Q I'm not asking for the name of the
9 individual. But this reference on the note on 330
10 says "two, three nights in a row outside AG's
11 office."

12 What did you mean by that?

13 A He told me that's how he got into it. The
14 individual that is involved here, and we are getting
15 very close to privacy violation, the individual who
16 was involved, his lawyer was camped outside of the
17 Attorney General's office for two or three nights and
18 the Attorney General said to Mr. Hubbell, will you
19 please take care of whatever the problem is and get
20 rid of these people.

21 Q So you believe that these phone calls on
22 your phone log --

1 A I think it is only one completed phone
2 call.

3 Q -- had to do with the resolution of this
4 issue?

5 A Yes.

6 Q And you are certain that it did not have
7 anything to do with Madison Guaranty or the Hale
8 discussions?

9 MR. BEN-VENISTE: I would say that is
10 pretty well nailed down by now.

11 THE WITNESS: Absolutely not, absolutely
12 not in any way with Arkansas.

13 BY MR. GICALE:

14 Q Do you know which of these calls on the
15 phone log -- when you say connected with, would that
16 be the latest call?

17 A It would be, if you look at my handwritten
18 notes, that they are chronological there, toward the
19 end, toward the bottom, which would make it toward
20 the end of the day. So, my guess is that it is the
21 3:05 call when we talked.

22 Q This set of notes that you have, these are

1 redacted as well. These are just your notes for the
2 day?

3 A For the day.

4 Q Is this something you do on a regular
5 basis --

6 A Yes.

7 Q -- or was it because of the events of that
8 particular date?

9 A A regular basis.

10 Q One phone call to Hubbell from you occurs
11 10 minutes after a call to Paula Casey. Do you
12 recall that at all?

13 A I will reiterate. There is no connection
14 between my conversation with Paula Casey and my
15 conversation with Web Hubbell.

16 MR. BEN-VENISTE: At some point, Lou, this
17 has got to sink in. Arguing with the witness in this
18 way, it is just not a profitable use of our time.

19 MR. GICALE: I don't believe I'm arguing
20 with the witness. I'm asking questions with respect
21 to this log, which I believe I am entitled to do.

22 MR. BEN-VENISTE: You are pointing out

1 something that is clear on the face of a phone
2 record, that has been explained several times to
3 you.

4 BY MR. GICALE:

5 Q Mr. Hubbell was also attempting to call you
6 I believe on September 17th, 1993. Was that in
7 relationship to -- was that related to the same
8 matter, if you know?

9 A I don't know. Do you have my notes for
10 September 17th?

11 Q I don't have your notes for that date. All
12 I have are Mr. Hubbell's. Actually, you called him.
13 This is a document identified as GRO 718. It is some
14 messages from you, a message from you to Mr. -- a
15 Judge Hubbell call at 6:00 p.m. on the 17th, lower
16 left-hand corner.

17 (GRO Exhibit 718 identified.)

18 (Witness examined the document.)

19 THE WITNESS: Well, it says that I returned
20 his call.

21 BY MR. GICALE:

22 Q So you still think this is related to that

1 personnel --

2 A I don't know what it is related to. The
3 other item I do know about. I explained it. It was
4 a personnel matter. The one on the 17th, whether it
5 was the same matter, I have no idea.

6 MR. FISHMAN: Off the record.

7 (Discussion off the record.)

8 BY MR. GICALE:

9 Q Were you aware of any pressure that Paula
10 Casey was receiving to stay in the Hale case or the
11 other nine referrals?

12 A I was not.

13 Q Do you know why her letter of recusal was
14 nonspecific in terms of her relationships with the
15 people involved?

16 A She drafted it. I don't know. I assume
17 she drafted it.

18 Q Do you recall any discussions with David
19 Margolis with respect to the drafting of that letter
20 and the basis for her recusal?

21 A Margolis and I had discussions on more than
22 one occasion with respect to the view that we both

1 shared which was that she should recuse herself.

2 I don't recall any discussion with respect
3 to the scope of the letter.

4 MR. GICALE: Can you mark this.

5 (Keeney Exhibit 5 identified.)

6 BY MR. GICALE:

7 Q Going back very briefly to the September
8 20, 1993 meeting. Do you know whether or not, did
9 anybody indicate to you in the meeting that they had
10 discussed -- strike that.

11 Did Irv Nathan indicate to you whether or
12 not he had had any discussions with respect to
13 Mr. Hubbell, with respect to the information received
14 from Mr. Gerth?

15 A I don't recall any such conversation or
16 comment by Nathan.

17 Q Do you know if anybody conveyed that
18 information to Mr. Hubbell?

19 A I do not.

20 Q Do you know of any way in which Mr. Hubbell
21 would have had access to that information?

22 MR. FISHMAN: At what point?

1 MR. GICALE: September of 1993.

2 THE WITNESS: Well, if he asked for a file,
3 he could have had access to it, if someone gave him
4 the file.

5 BY MR. GICALE:

6 Q Was the structure of the office such
7 that -- was he in a position such that he could have
8 asked for a file and that someone below him would
9 have given him that file?

10 A Yes. I believe the criminal division
11 wouldn't have given him the file, but it is possible
12 somebody in the records section or somebody -- that
13 is highly speculative.

14 MR. FISHMAN: Are you asking Mr. Keeney to
15 speculate?

16 MR. GICALE: Whether it is possible in
17 terms of the structure of the Department of Justice
18 and his title, whether he would have had access to
19 the files.

20 MR. FISHMAN: As a speculative
21 possibility?

22 THE WITNESS: It is possible by virtue of

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1 his position.

2 BY MR. GICALE:

3 Q Showing you what has been marked as Exhibit
4 Number 5, on this exhibit these are your handwritten
5 notes?

6 A They are.

7 Q It is unclear as to the date although we
8 see 7/93 on it. Do you have any idea what the month
9 is?

10 A It is early in the year, because this Race
11 Horse Hanes conversation took place before Hubbell
12 was confirmed.

13 Q Could it be as early as April '93?

14 A It might have been earlier.

15 Q Now, at the bottom it says "Web Hubbell,
16 keep him up to date on any developments." What is
17 that in reference to?

18 A That is in reference to this Race Horse
19 Hanes conversation. There was some sort of a case
20 that Hanes was interested in, and Web asked me to
21 keep him up to date on developments.

22 Q Did he ever ask you to keep him up to date

1 on developments with respect to Whitewater or Madison
2 Guaranty?

3 A No. I never discussed Whitewater with Web
4 Hubbell.

5 MR. BEN-VENISTE: How many times can you
6 ask the same question?

7 Jack, were the Germans this persistent?

8 BY MR. GICALE:

9 Q Showing you what is marked for
10 identification as -- there are two numbers here. SWC
11 570 and GRO 570, and if there is another Bates
12 number, it is not on there. These are copies of
13 message slips from Mr. Hubbell. One is dated October
14 18 at 5:20. It is a message from you.

15 A Calling.

16 Q Do you have any idea what you were calling
17 Judge Hubbell about at that point?

18 A Conceivably, it could have been a personnel
19 matter, but I have no clear recollection. I am clear
20 on the other one because of the notes.

21 Q Showing you what has been marked for
22 identification as SWC 571, -- let me make sure that

1 is -- it is 571 and GRO 571.

2 (Exhibit SWC GRO 571 identified.)

3 BY MR. GICALE:

4 Q This is October 19. This also includes a
5 message from you at 9:45 on that date. Do you recall
6 what that message was about to Mr. Hubbell, what that
7 phone call was about?

8 A It wasn't completed according to this.

9 Q Do you have any idea why you were calling
10 him?

11 A No.

12 Q Now, you ultimately did not attend the
13 meeting on November 3, 1993 when Paula Casey's
14 recusal was discussed with Mr. Heymann; correct?

15 A That's correct, I didn't attend that
16 meeting, even though it is on my calendar. Something
17 intervened, and I looked later to try to figure out
18 what it was that intervened. Something intervened.
19 Something was more important and I didn't go to the
20 meeting.

21 Q Now, sometime in November and December of
22 1993, did you learn that the Small Business

1 Administration had turned over some records to the
2 White House?

3 A Yes. Somewhere in that time period.

4 Q What do you know about the turning over of
5 records to the White House by the SBA?

6 A I know that they were turned over and I
7 know that we requested the SBA to get the documents
8 back.

9 Q Do you know who they were turned over to at
10 the White House?

11 A No.

12 Q Do you recall how they were returned to the
13 FBI or the Department of Justice or the SBA?

14 A They were returned back to SBA. My
15 understanding, pursuant to our request, they were
16 returned back to SBA.

17 Q Do you know whether or not attorneys in the
18 frauds division suggested that personnel in the White
19 House be interviewed with respect to the receipt of
20 these documents?

21 A Give me that again, please.

22 MR. GICALE: Read it back.

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1 (The reporter read the record as requested.)

2 THE WITNESS: I don't recall.

3 BY MR. GICALE:

4 Q Do you recall whether or not there was ever
5 a report with respect to the interview of those
6 personnel in the White House, with respect to receipt
7 of those documents by the SBA?

8 A I do not.

9 Q You don't recall?

10 A I don't recall. The only thing I recall is
11 that we learned about it and both Mrs. Harris and I
12 were concerned that those documents be returned to
13 the SBA. My recollection is coming back a little
14 bit. I think Neil Eggleston was the one who had the
15 documents over at the White House.

16 Q Do you recall in December, on December 26,
17 1993, having a meeting with Joanne Harris,
18 Mr. McDowell, Mr. Gangloff and Mr. Margolis with
19 respect to some White House files, travel office
20 files?

21 A We had a lot of meetings with respect to
22 the travel office file. Can you elucidate a little

1 bit there?

2 MR. GICALE: Off the record.

3 (Discussion off the record.)

4 BY MR. GICALE:

5 Q Showing you what is marked for
6 identification as a deposition exhibit, McDowell 3.
7 This is a copy of some notes we received from Charles
8 Sgro from the Deputy Attorney General's office on
9 October 13 wherein he attached copies of notes of Joe
10 Gangloff dated 12/26; is what it says? I believe it
11 refers to 1993.

12 Could you review those and see whether or
13 not those notes refresh your recollection with
14 respect to that meeting?

15 (Witness examined the document.)

16 A I'm having trouble reading them.

17 Q Pardon me?

18 A I'm having a little trouble reading the
19 notes.

20 These are not very helpful. I have trouble
21 reading them. To the extent that I can read them,
22 they are so cryptic.

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1 Q Do you recall in December discussing the
2 possibility of a missing Whitewater file in a meeting
3 with Joanne Harris and Jerry McDowell and
4 Mr. Gangloff?

5 A A missing Whitewater --

6 Q A missing Whitewater file.

7 A We have had discussions like that, and I
8 can't -- we have had discussions with respect to
9 files, but I don't recall specifically a missing
10 file.

11 MR. BEN-VENISTE: If it is helpful, that
12 was established yesterday in Mr. McDowell's
13 deposition to refer to a story that was in The
14 Washington Times as to whether anything was a missing
15 Whitewater file. That's where McDowell thought the
16 reference came from.

17 THE WITNESS: I can't help you at all.

18 BY MR. GICALE:

19 Q Do you recall a meeting to discuss the
20 interview of White House personnel, including
21 Mr. Eggleston and some others, with respect to the
22 SBA document issue?

1 A Well, just vaguely, because as I indicated
2 earlier, we were concerned about them having
3 possession of those SBA documents. Whether or not
4 they were interviewed, whether Eggleston was
5 interviewed in connection with it, I don't know. But
6 my understanding is it was ultimately returned, which
7 was our goal, returned to SBA.

8 Q Going back briefly to the recusal issue.
9 When you indicated in I believe it was September 1993
10 that Ms. Casey should recuse herself from the Hale
11 matter, what was her response?

12 A Well, she took the position that she was a
13 fair person and that she could handle this fairly and
14 appropriately. I kept emphasizing that I thought she
15 probably could -- I wasn't questioning whether she
16 could or not.

17 I was questioning whether it was
18 appropriate for her to remain in the case, that there
19 was a perception problem because of her relationship,
20 the relationship being having been appointed by
21 President Clinton.

22 So, my whole pitch was on the appearance,

1 and her whole pitch was I'm a woman of integrity and
2 I can handle this matter.

3 Q Is that how it was left between you and
4 Ms. Casey until November 3rd, when she met with these
5 people?

6 A I think the conversation terminated, she
7 said she would think about the arguments that I had
8 been making. I don't recall having had anything to
9 do with it subsequently.

10 Q Do you know whether or not she indicated in
11 September 1993, after talking to you, that she would
12 recuse herself but that the timing wasn't right and
13 that it would have to be done at some later point in
14 time?

15 A I don't recall that. That doesn't make any
16 sense to me. If you are going to recuse, you should
17 recuse.

18 Q Do you know whether or not Webster Hubbell
19 had any Whitewater documents at his home?

20 A I do not.

21 Q Do you know whether or not Webster Hubbell
22 made any visits to the Resolution Trust Corporation's

1 offices in 1993?

2 A I have no idea.

3 Q More specifically, in August, September,
4 October 1993.

5 A I have no idea.

6 Q Did you or anyone in your office have any
7 contacts with any present or former employee of the
8 White House relating to criminal referral C0004?

9 A Did I or anybody in the criminal division
10 have any contact with anybody in the White House with
11 respect to this referral?

12 Q Any present or former employee of the White
13 House related to that referral.

14 A I didn't. Whether anybody else did, I
15 don't know.

16 Q Do you have any -- go ahead.

17 A That question is a little difficult,
18 because there may have been conversations with
19 respect to documents. For instance, Mrs. Harris had
20 conversations with David Kendall with respect to the
21 response with respect to certain documents, and it
22 finally resulted in a subpoena being issued.

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1 Q Are you aware of any others?

2 A I'm not aware of any others, but the FBI
3 and our attorneys might have had contacts during the
4 course of the investigation, and I don't know.
5 Offhand, I don't know.

6 Q Do you have any knowledge of any contacts
7 between any member of the department and the White
8 House -- I'm sorry. Strike that.

9 A What I'm trying to make a distinction here,
10 when you ask a question in that form, it suggests
11 that the contact was improper. There were contacts
12 by representatives of the department and the White
13 House in the course of the investigation. I want to
14 make that clear.

15 Q I understand. My question is inquiring as
16 to the contacts, what you know about them.

17 Did Mr. Carver or Mr. McDowell ever notify
18 you that Mr. Hubbell had been over at the RTC offices
19 at some point in time in 1993?

20 A If he did, I don't recall.

21 MR. GICALE: One moment, and I think I'm
22 done.

1 (Pause.)

2 BY MR. GICALE:

3 Q With respect to the recommendation to
4 Ms. Casey that Mr. Coleman could make his proffer to
5 Washington or the Justice officials in Washington,
6 when did you discuss that with her? Was that on
7 September 20, 1993?

8 A It was a discussion during that time
9 period. Whether I had one conversation with Paula
10 Casey or two, I'm not sure, but we did discuss it
11 during that time period. We discussed when it was
12 raised.

13 I think I also discussed this with the
14 assistants, that if Coleman didn't trust the office,
15 apparently distrust extended to the office and not
16 just Ms. Casey, that if he wanted to make a
17 good-faith proffer, he could make it to Washington.

18 Q Now, in that period in August '93 and
19 September '93, you said you were talking to the
20 assistants, Jackson and --

21 A I did talk to them.

22 Q Jackson and Johnson. At that point in time

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1 was the frauds division involved, Mr. McDowell and
2 Mr. Carver, or did that occur after your September
3 20th meeting?

4 A That occurred later, as I recall.

5 MR. FISHMAN: When you say "involved," what
6 do you mean involved?

7 BY MR. GICALE:

8 Q Were you having direct conversations with
9 the U.S. Attorney's Office at that point in time?

10 MR. FISHMAN: What point in time?

11 BY MR. GICALE:

12 Q August and September of 1993.

13 A I was having phone conversations with them,
14 and on at least one occasion Gangloff was present.

15 Q I guess what I'm trying to determine is
16 whether somebody from the fraud section or public
17 integrity was involved in August or September 1993
18 with respect to these discussions.

19 MR. FISHMAN: He has already testified that
20 on September 20th they were all involved.

21 BY MR. GICALE:

22 Q I know that, but prior to that point.

- 1 A I don't think so.
- 2 Q Now, you previously indicated that you have
3 never discussed Whitewater-related matters with Web
4 Hubbell?
- 5 A That's correct.
- 6 Q Has he ever requested you to discuss
7 Whitewater-related matters with him or Madison
8 Guaranty matters with him?
- 9 A No.
- 10 Q When was it that you found out that Doug
11 Frazier did not receive the memo that was addressed
12 to him dated March 19, 1993 with respect to the first
13 referral?
- 14 A Long after the fact.
- 15 Q Would it have been as late as August or
16 September of 1993, when you got involved with this?
- 17 A I don't know.
- 18 Q When were you first made aware of the Hale
19 investigation?
- 20 A Somewhere during this August-September time
21 period.
- 22 Q Now, some records were obtained from Hale

- 1 and Hale's business in July of 1993. Were you aware
2 of it at that point?
- 3 A I don't think so. They were obtained by
4 the United States Attorney's office?
- 5 Q Right.
- 6 A I don't think I was aware of that, no.
- 7 Q And the matter was referred from the SBA in
8 May or June of 1993. Were you aware of that?
- 9 A To the United States Attorney's office?
- 10 Q Yes.
- 11 A I don't think so.
- 12 Q Between the time that Mr. Urgenson
13 submitted the memorandum with respect to the first
14 referral and the time you later learned that
15 Mr. Frazier had not received it, did you inquire of
16 anyone as to whether or not any action had been taken
17 on it?
- 18 A I did not.
- 19 MR. GICALE: I have nothing further at this
20 point.
- 21 MR. BEN-VENISTE: Let's take a couple
22 minutes.

1 (Recess.)

2 EXAMINATION

3 BY MR. BEN-VENISTE:

4 Q Mr. Keeney, I would like to ask you about
5 the information that was received from Mr. Nathan in
6 September which is alluded to in your memorandum of
7 September 21 to the director of the FBI.

8 A Yes.

9 Q What did Mr. Nathan say in the first
10 instance about the source of the information he had
11 received?

12 A He said it was a person to whom he had
13 promised confidentiality.

14 Q So, I take it that Mr. Nathan didn't
15 initiate the request for confidentiality but that the
16 "source" made that request of Mr. Nathan?

17 A I assume so.

18 Q Did you attempt to question Mr. Nathan
19 about the identity of the source, despite the initial
20 request for confidentiality that the source had
21 made?

22 A I may have asked him some questions, trying

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1 to get an idea of whether the person who was the
2 source had direct information, indirect information.
3 I probably did ask him a few questions along those
4 lines.

5 Q What did he say about whether the source
6 had direct information of Hale, if you remember?

7 A I really don't remember.

8 Q Clearly, as of the 21st of September, you
9 were of the view that Mr. Nathan's source was
10 different than Mr. Gerth who had spoken directly to
11 SAC Satowski of the Little Rock FBI's office.

12 A Yes. I was of the view that they were
13 separate sources, yes.

14 Q I take it that was somewhat embarrassing
15 later when you had to put the thing together and
16 conclude that there was some game going on, maybe,
17 involving Mr. Gerth?

18 A It was embarrassing, yes.

19 Q Did you conclude that Mr. Coleman was
20 trying to put pressure on the U.S. Attorney's Office
21 and now the department through the approach of
22 Mr. Gerth to Mr. Nathan to try to get this deal that

1 he was proposing done for his client?

2 A I felt that he was putting pressure on the
3 United States Attorney's office. I don't know that I
4 ever really focused on the Gerth motivation.

5 Q Well, it was somewhat unusual for a
6 newspaper reporter to provide information under a
7 promise of confidentiality. I take it that it was
8 not the case so far as you knew that Mr. Nathan was
9 providing any information back to Mr. Gerth?

10 A I have no knowledge that he was. But I'm
11 sure that Mr. Gerth had that in mind, that in giving
12 the information, he might also be the recipient of
13 some information. But no indication that it worked
14 that way.

15 Q Did you speak to Mr. Nathan to ensure that
16 that would not happen?

17 A I don't think so. Nathan was superior in
18 the chain of command.

19 Q Sometimes the adjunct's advice has been
20 known to be given despite a difference in the chain
21 of command.

22 A That's true. I didn't see any need to

1 discuss that.

2 Q How is it that Mr. Nathan eventually gave
3 up the identity of the source?

4 A I can't recall that, how he revealed that.
5 At some point we did find out that they were one and
6 the same.

7 Q I take it it became important for you to
8 know whether there was --

9 A A second source, yes.

10 Q So, at least as of the time of September
11 21st, when you wrote this memorandum to the director
12 of the FBI, you were in the process of trying to
13 compare the information that Satowski had gotten from
14 Gerth and the information Nathan had provided?

15 A Yes.

16 Q As far as Paula Casey's recusal, is it fair
17 to say that it was your view on the basis of your
18 experience with the department spanning many
19 administrations that, from the very beginning, once
20 there was some allegation that might even
21 peripherally involve the President of the United
22 States, the U.S. Attorney who was appointed by that

1 President should for purposes of appearance recuse?

2 A That was my position, yes.

3 Q So, whether she got a good grade in law
4 school from Mr. or Mrs. Clinton, who were law
5 professors at the law school she attended, or whether
6 she was friends with Governor Tucker or best friends
7 with somebody else who might be mentioned in the
8 referral, that was of sort of background music as far
9 as you were concerned; you realized from the get-go
10 that from an appearance standpoint she was in a
11 no-win situation and needed to recuse?

12 A Exactly, yes.

13 Q And that in terms of her reaction to the
14 prospect of recusal, is it fair to say that either
15 Mr. Coleman or others down in Little Rock had
16 engendered some unfavorable press trying to pressure
17 her on the issue of fairness?

18 A I'm afraid I don't understand that
19 question.

20 Q Did she mention to you, to the best of your
21 recollection, that there had been local news stories
22 suggesting that she couldn't be fair?

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1 A I don't remember there were any such. It
2 could well have happened, but I don't remember.

3 Q Did you get the idea, as a result of
4 conversations with Ms. Casey, that she felt that her
5 personal integrity was an issue on the question of
6 recusal?

7 A Yes. She was offended by it. As I think I
8 explained, she said she is perfectly capable of
9 handling this matter, and my pitch was not that she
10 couldn't but the perception was wrong if she stayed
11 there.

12 Q From the standpoint of your experience with
13 the department, it is not unusual, is it, for a U.S.
14 Attorney who is put in such a position to react more
15 or less in the same way as Ms. Casey, particularly a
16 new U.S. Attorney?

17 A Yes. I have had other United States
18 Attorneys react similarly. They are offended by the
19 idea that they can't be fair, of the suggestion that
20 they can't be fair.

21 Q After the meeting that you had in
22 Washington with Ms. Casey --

1 A I did not meet with her.

2 Q You, the department, had with Ms. Casey on
3 the issue where Mr. Heymann and Mr. Nathan and
4 Mr. McDowell and others participated, to the best of
5 your knowledge, it became clear to her or more clear
6 to her that the appearance question was far more
7 important than the question of whether she could be
8 fair?

9 A Apparently it did.

10 Q Is it clear, and I don't want to go through
11 all of the underlying documents, but that the October
12 '92 determination by the department that Mr. Banks,
13 the U.S. Attorney, had acted appropriately in his
14 analysis of the RTC referral, is that something that
15 you agreed with?

16 A Acted appropriately in the sense that he
17 wasn't going to open up an investigation until after
18 the -- until after November 3, yes, I agree.

19 Q Was it clear to you, and without reviewing
20 all of the various components of such a decision,
21 that despite the FBI teletype that requested that the
22 Little Rock FBI office open a limited investigation,

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1 that his reaction to that was appropriate, where he
2 advised the SAC in Little Rock that he would not
3 participate in the opening of such an investigation?

4 A Well, on the timing, I agree with it. But
5 I think we show later we didn't feel with the
6 election out of the way that there was any need for
7 his recusal.

8 Q And basically, the memo went down to him
9 prepared by a line attorney in the fraud section,
10 Mr. MacDougall?

11 A Yes.

12 Q Reviewed up the line and was sent down,
13 eventually sent down to U.S. Attorney Banks in Little
14 Rock essentially?

15 MR. FISHMAN: If we can correct the
16 record. Mr. Banks was gone on March 1st. When the
17 memo went back, I believe the testimony is that
18 Mr. Pence was the interim.

19 BY MR. BEN-VENISTE:

20 Q By the time it went back down, Mr. Pence
21 was the acting U.S. Attorney down there, which said
22 essentially there isn't any grounds for recusal, but

1 if there is a declination, the department is not
2 going to argue with it.

3 A Yes.

4 Q Do you know how it came to be that you were
5 not invited to the meeting of Mr. Mueller and
6 Mr. Raphaelson when they initially reviewed the
7 matter in the department?

8 A No, I don't.

9 Q As a result of the Mueller-Raphaelson
10 meeting, is it correct that the FBI asked Little Rock
11 FBI office to provide an evaluation of the
12 allegations on an accelerated basis?

13 A Yes.

14 Q Do you understand whether that was normal
15 procedure for a referral on an RTC matter like that,
16 given the size of it, to go to the director of the
17 FBI and then be accelerated for an initial review?

18 A It is not the normal thing.

19 Q Were you advised that Mr. Mueller had said
20 that this matter ought to be treated as a normal
21 matter?

22 A I think I was, yes.

1 Q Do you understand what the mechanism was
2 whereby then this matter was requested to be
3 accelerated beyond the normal time frames?

4 A Do I understand the mechanism?

5 Q Yes. In other words, who made that
6 decision?

7 A Mueller, apparently.

8 Q That Mueller made the decision, did you
9 ever discuss it with him?

10 A I may have. I don't have any specific
11 recollection of discussing it with him, but I may
12 have.

13 Q Here's the scenario as I understand it.
14 The U.S. Attorney says in substance that this doesn't
15 pass the smell test.

16 MR. GICALE: I would object to that.
17 That's not what he -- that is not even close to being
18 the substance of what he said.

19 MR. BEN-VENISTE: Let me finish my
20 question.

21 BY MR. BEN-VENISTE:

22 Q As I see it, the U.S. Attorney says that

1 this doesn't pass the smell test, referring to the
2 RTC referral, the timing and all the circumstances,
3 the matter is bucked all the way up to the director
4 of the FBI who has lawyers at the Little Rock SAC
5 conduct an investigation and report back within a
6 week's time.

7 Are you saying it is somebody in the
8 department that causes that to happen as opposed to
9 somebody at the FBI?

10 A My understanding is that it was a
11 conversation between Mueller and Potts that resulted
12 in it. It wasn't an investigation. It was my
13 understanding it was a review of what was available.

14 Q The FBI office in Little Rock says no; is
15 that correct, they are not going to do it?

16 A I don't remember that.

17 Q Well, you know that there wasn't a one-week
18 time frame where there was an accelerated review;
19 isn't that so?

20 A My recollection was that they did get back
21 to the bureau in Washington and to the department
22 with respect to it. I'm a little hazy on it, but I

1 thought they did get back.

2 Q That that review was carried out.

3 A I could be mistaken, but I thought it was,
4 yes.

5 Q But as far as you know, it was Mueller's
6 decision to make?

7 A Yes.

8 Q Even though the order came from the office
9 of the director of the FBI?

10 A Well, my understanding was that it was a
11 request by the Assistant IG, criminal, to the bureau,
12 and they complied with the request.

13 Q To finish up on the review in the
14 department of the substance of the initial review?

15 A Yes.

16 Q Did anyone, to your knowledge, put any
17 pressure on Mr. MacDougall or anyone in the
18 department as to how that conclusion should come out?

19 A No, not to my knowledge.

20 Q Do you have any reason to believe that any
21 such pressure was applied?

22 A I do not.

1 Q Now, is it clear in your mind that the U.S.
2 Attorney's Office took the correct position vis-a-vis
3 Mr. Hale in requiring a proffer before they would
4 commit to any consideration in connection with
5 Mr. Hale's criminal involvement?

6 A Absolutely.

7 Q And that wasn't an ad hoc decision, was
8 it? It was department policy?

9 A That is department policy, yes.

10 Q In connection with what you were hearing
11 from Little Rock, was it clear to you that the U.S.
12 Attorney's Office in Little Rock suggested to
13 Mr. Coleman, Hale's lawyer, that if they didn't want
14 to make a proffer to them, they could make a proffer
15 to the FBI?

16 A I'm sorry. Could I have that question
17 again.

18 (The reporter read the record as requested.)

19 THE WITNESS: I'm not sure I was aware of
20 that, but that would have been perfectly acceptable.

21 BY MR. BEN-VENISTE:

22 Q I will represent to you that in the

1 correspondence, it is reflected that such an offer
2 was made. Indeed, Mr. Coleman was no neophyte in
3 terms of being an experienced practitioner, was he,
4 as far as you knew?

5 A I really didn't know that much about him.

6 Q During the period of time that the
7 department took over the investigation and assigned
8 Mr. Mackay to that responsibility, Mr. Coleman still
9 didn't have his client make the proffer that was
10 being requested; isn't that so?

11 A That's my recollection, yes.

12 Q Did you conclude that this business about
13 who he would make the proffer to was not a real issue
14 of substance?

15 A It didn't appear to be, since he didn't
16 make it to Mackay when Mackay took over.

17 Q One final question with respect to Paula
18 Casey's so-called declination of the first criminal
19 referral.

20 Did you read her response or her letter
21 with respect to that as an actual declination?

22 A I'm afraid I don't recall the specifics of

1 that letter, of her correspondence in that regard.

2 Q Okay.

3 With respect to the urgent report that was
4 filed by U.S. Attorney Banks on the C0004 original
5 referral, were you aware that it was Mr. McWhorter
6 who, in conversation with Mr. Banks, told Mr. Banks
7 that that was the format that he should use to bring
8 this matter to the attention of the department?

9 A I wasn't. I don't think I was aware of
10 that, no.

11 Q When you reviewed the chronology prepared
12 by Allen Carver and the documents that he had
13 attached, did it strike you that you were doing
14 something furtive or improper, Mr. Keeney?

15 A No, it didn't.

16 Q The purpose of doing that, I presume, was
17 to help jog your recollection to the extent possible
18 with a chronology of events that may have involved
19 the recollections of a number of witnesses?

20 A Yes. I was concerned about the three basic
21 dates. I was trying to get them down as well as I
22 could. Carver's memorandum is not that useful to me

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1 because he was involved -- I was not involved very
2 much in the same things as he. I think Paul is
3 right. If I had to do it over again, I wouldn't do
4 it again. All right?

5 MR. BEN-VENISTE: You just lopped off a few
6 minutes from the depo next time.

7 BY MR. BEN-VENISTE:

8 Q There wasn't any impropriety involved in
9 that, in your view, was there?

10 A I didn't think so. Obviously I wouldn't
11 have done it. I really didn't focus on the fact that
12 they are both witnesses.

13 MR. BEN-VENISTE: I have nothing further.

14 EXAMINATION

15 BY MR. GICALE:

16 Q I promise to be brief.

17 One question I didn't get a chance to ask
18 you earlier. Gerald Stern, was he involved in the
19 recusal issue, the recusal decision of Ms. Casey?

20 A No, not with me. Whether he was involved
21 independently or whether he was at that meeting, I
22 don't know.

1 Q Do you know whether or not Ms. Casey
2 complained about his position with respect to the
3 recusal issue?

4 A Stern?

5 Q Yes. Gerald Stern.

6 A I don't know anything about that.

7 Q What was his position in the department?

8 A He is special counsel for financial fraud
9 matters. It is a Presidential appointment that rose
10 out of the great interest in the financial fraud area
11 going back six or seven years ago.

12 Q The document dated March 19, 1993 from you
13 to Doug Frazier with respect to the recusal package,
14 this is the 7039 document, the way it was drawn up,
15 one of the sentences in there states "Further, we
16 would not question a decision by United States
17 Attorney to decline further substantive action on the
18 deferral."

19 Why was it written in that fashion?

20 A I don't know. I didn't write it. It is
21 written in an unusual fashion.

22 Q In your usual --

1 MR. FISHMAN: He said in an unusual
2 fashion.

3 BY MR. GICALE:

4 Q And you didn't discuss why it was written
5 that way with Urgenson?

6 A I didn't see this before it went up. I
7 discussed orally -- my recollection is that Urgenson
8 and I had an oral discussion with respect to this
9 package, and then I just told him when the memo is
10 prepared, you send it out. I didn't see it
11 beforehand.

12 Q But you would agree it is kind of unusual
13 the way it is written?

14 A Yes. I wouldn't have written it that way.
15 That's the type of thing if the United States
16 Attorney asks me my opinion, I would give it to him.
17 I wouldn't have written it that way.

18 Q And Mr. Urgenson did not indicate he was
19 going to write that way or that it would be written
20 that way to you?

21 A I don't believe so.

22 Q Written that way, the U.S. Attorney had a

1 considerable amount of discretion in the way to write
2 it?

3 A I would say so. The attached memorandum
4 doesn't express any enthusiasm with respect to the
5 prosecutability of the case, leaves it wide open as
6 far as his discretion is concerned.

7 Q With respect to the plea negotiations with
8 Mr. Coleman, Mr. Ben-Veniste said to you did you
9 believe that the U.S. Attorney's Office acted in a
10 correct manner when they requested that a proffer
11 occur first, and you stated that you believed they
12 did; is that correct?

13 A Yes. I do believe they did.

14 Q Were you aware of the fact that they were
15 requiring a felony plea regardless of whether or not
16 a proffer would be offered?

17 A I think that was their position. My
18 recollection is that was their position, yes.

19 Q Are you also aware of the fact that the
20 department's position on that changed at some later
21 point when Mr. Mackay became involved in the case?

22 A I may be aware. I'm not sure. I don't

1 directly supervise fraud. I may not have been in on
2 the details of it at that point.

3 Q Do you recall that Mr. Mackay may have
4 changed that offer to Mr. Coleman that he give a
5 proffer and that the department would reserve its
6 judgment as to whether or not a felony or some other
7 kind of disposition would be offered?

8 A Well, that would be a standard procedure as
9 far as I am concerned, get the proffer and then make
10 an evaluation of the proffer and determine what you
11 are going to give up.

12 Q That's a different position than requiring
13 a felony absolutely with a proffer; correct?

14 A Well, the original position was a felony.
15 I don't know whether they would have adhered to that
16 position if they got a proffer or not.

17 In other words, if they got the greatest
18 proffer in the world, I don't know whether they would
19 have gone down on that, but that didn't arise at that
20 time.

21 Q In terms of your discussions with
22 Ms. Casey, you became aware of the fact that they

1 were saying we will give you the felony regardless of
2 whether or not you will make a proffer; correct?

3 A I'm not so sure whether I had that
4 discussion with Ms. Casey. I don't know. I don't
5 remember. My position was you get the proffer and
6 then you evaluate it and then you make a judgment as
7 to what you are going to charge. If you tell them up
8 front it is going to be a felony, that doesn't mean
9 he can't change his mind if you get a proffer and you
10 think that the individual getting the proffer
11 warrants a misdemeanor treatment.

12 Q But it would be important for the other
13 side to say that you would be flexible in terms of
14 considering a disposition other than a felony when
15 they make a proffer, wouldn't it, in their
16 decisionmaking?

17 A I don't know how important -- this is a
18 lawyer's proffer. It is not binding on anybody. So,
19 you can make it so that it can't be used in any
20 fashion. I don't think it is that important. If you
21 are taking a felony position, I don't think that is a
22 final position.

1 Q You don't recall whether or not Ms. Casey
2 indicated whether that was a final position of the
3 office?

4 A They indicated it was a position. The only
5 distinction I'm making, I'm not saying they didn't
6 say that. I think they did communicate that to
7 Coleman, that they were going to want a felony, but
8 that is not unusual.

9 Q But at some later point in time, Mr. Mackay
10 decided to change that?

11 A That's what I'm telling you. Based upon
12 further evaluation, you can change it, sure.

13 Q Which position was the correct position,
14 Mr. Mackay's or Ms. Casey's?

15 A I don't think either one is an incorrect
16 position. First of all, you will have to back up a
17 little bit. I don't know whether -- I don't think
18 Mackay did get a proffer.

19 If he decided in his judgment that it was
20 worth a misdemeanor to try and induce Hale to
21 cooperate, that would be within the realm of his
22 discretion. The same way with Ms. Casey. She said

1 felony, which I don't take as a final position, but
2 if it were a final position, that's within her
3 discretion.

4 Q How is a defense attorney to know whether
5 or not that is the final position?

6 A I don't know. Ask Mr. Ben-Veniste. He is
7 familiar with these things.

8 Q But is it one approach to tell a defense
9 attorney that if you come in and make a proffer, then
10 we will determine whether or not it will be a felony
11 or misdemeanor or some other type of determination?

12 A You are arguing with respect to how an
13 individual prosecutor handles his relationship with a
14 defendant. I'm telling you that either position, if
15 it is a reasoned position, is an acceptable
16 position.

17 Q Well, the department changed its position
18 on this --

19 A It changed its position because there was a
20 different attorney prosecutor on the case who had
21 gotten into it and he made a judgment different than
22 the tentative judgment, and I keep saying this,

1 Ms. Casey's tentative judgment. She may well have
2 changed her mind, too, at a later date.

3 Q Why do you believe her judgment was
4 tentative?

5 A Because I think any time you are in a
6 negotiation like this, it is tentative. It is
7 subject to changing your position as the facts
8 develop.

9 Q Did you become aware of the fact that
10 Mr. Coleman indicated that he was concerned about her
11 inflexibility in terms of requiring a felony
12 disposition regardless of whether or not a proffer
13 was --

14 A I don't think I was aware of that. The
15 only thing I was aware of was he said that he didn't
16 trust the Little Rock office.

17 MR. GICALE: I have nothing further.

18 EXAMINATION

19 MR. BEN-VENISTE:

20 Q Mr. Keeney, just to follow up on that.
21 While the department may have changed its position,
22 Mr. Coleman never changed its position of not

1 providing a proffer; isn't that so?

2 A My recollection is he never provided a
3 proffer until the independent counsel took over.

4 Q So he squawked about Ms. Casey and went to
5 The New York Times and I left out the part that he
6 approached the White House, all of it to no avail,
7 never made a proffer.

8 Then Mackay takes over, says, okay, we have
9 a completely open mind, make your proffer, we will
10 evaluate it. He doesn't make a proffer then.

11 Ultimately, when independent counsel Fiske comes
12 along, he makes a deal with Fiske presumably on a
13 proffer, but he pleads to two felony counts; correct?

14 A I think that's correct, yes.

15 MR. BEN-VENISTE: Nothing further.

16 I do have one thing further. I'm sorry.

17 EXAMINATION

18 BY MR. BEN-VENISTE:

19 Q With respect to the SBA transmission of
20 documents to the White House, did you in the course
21 of your review of any matter associated with that
22 conclude that there was any illegality or impropriety

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1 associated with the transfer of those documents?

2 A No illegality or impropriety, but it wasn't
3 a good idea.

4 MR. BEN-VENISTE: Nothing further.

5 (Whereupon, at 12:55 p.m., the deposition
6 was concluded.)

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JOHN C. KEENEY

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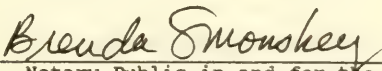
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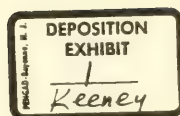
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I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.


Notary Public in and for the
District of Columbia

My Commission Expires

SEPTEMBER 14, 1996



1 RPTS BLAZEJEWSKI

2 DCMN QUINTERO

3
4 COMMITTEE ON BANKING AND FINANCIAL SERVICES

5 U.S. HOUSE OF REPRESENTATIVES

6 WASHINGTON, D.C.

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9 - - - - - x
10 In the matter of: :

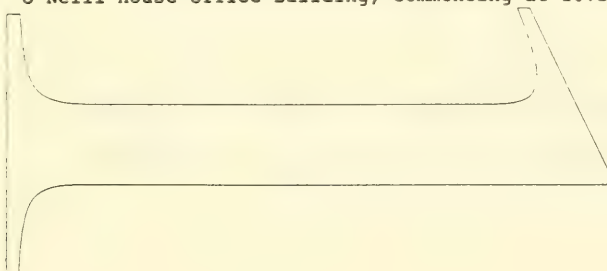
11 MADISON GUARANTY :
12 SAVINGS & LOAN :
13 - - - - - x

DEPOSITION OF JOHN C. KEENEY

14
15 Wednesday, September 13, 1995

16
17 Washington, D.C.

18
19
20 The deposition in the above matter was held in Room 714,
21 O'Neill House Office Building, commencing at 10:25 a.m.



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6 Appearances:
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8 Staff Present for the Banking and Financial Services
9 Committee: Thomas Clark, Senior Counsel; Jackson R. Sharman,
10 III, Esq., Special Counsel; Angela Garcia, Minority Staff; and
11 Alison Watson, Professional Staff.

12 For Department of Justice:

13 PAUL FISHMAN, ESQ.
14 United States Department of Justice
15 Tenth Street and Constitution Avenue, N.W.
16 Washington, D.C. 20530
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1 WHEREUPON,

2 JOHN C. KEENEY,

3 a witness in the above-entitled matter, was called as a
4 witness, and having been first duly sworn or affirmed to tell
5 the truth, the whole truth, and nothing but the truth, was
6 examined and did testify as follows:

7
8 EXAMINATION BY MR. CLARK:

9 Q Good morning, Mr. Keeney.

10 My name is Tom Clark. I am Senior Counsel to the
11 Committee on Banking and Financial Services. I appreciate
12 your coming today.

13 Also present is Special Counsel, Jack Sharman and
14 representing the Minority, professional staff member, Angie
15 Garcia.

16 As you know, the committee is investigating the failure
17 and resolution of Madison Guaranty Savings and Loan
18 Association and related matters, including the executive
19 branch's handling of Madison Guaranty. Most of my questions
20 will be related to that area.

21 I will have some questions for you, and I will probably
22 show you some documents. After I am finished, Ms. Garcia may
23 have some questions for you. After Ms. Garcia is finished,
24 Mr. Fishman, Counsel for the Department, may ask questions.

25 This deposition is not governed by the Federal rules of

1 civil procedure, but objections may be made for the record.
2 If an objection is made, the question will either be
3 withdrawn, recast, or allowed to stand in the discretion of
4 the questioner.

5 If there is an instruction not to answer a question and
6 the instruction is followed, Majority staff in consultation
7 with Minority staff will determine if the deposition is to
8 proceed or if a recess must be called to obtain the Chairman's
9 instructions, if any. In a spirit of cooperation, however,
10 the committee hopes to avoid reaching that point.

11 It is not a marathon, we can take breaks whenever you
12 feel it is necessary, just so indicate. If you don't
13 understand my question, just tell me, and I will try to
14 rephrase it.

15 We received yesterday a copy of a history for you with
16 the Department. Have you had an opportunity to see that?

17 A No, I don't think so. Who provided it?

18 Mr. Fishman. It was provided by the Office of
19 Legislative Affairs.

20 The Witness. I have probably seen it before.

21 BY MR. CLARK:

22 Q Why don't you take a quick look at it?

23 For the record, this is a single page document. At the
24 top it has John C. Keeney, and then it has from, to, position,
25 and it has various dates and various descriptions underneath.

1 A Actually this 11/66-8/69, I was Deputy Chief in the
2 Organized Crime Section. This may have been the
3 administrative title. That is okay.

4 Mr. Fishman. The one thing I think that is not
5 completely reflected is the number of times on which
6 Mr. Keeney has been the Acting Assistant Attorney General for
7 the Criminal Division.

8 Mr. Clark. Fine, I can ask him that.

9 Mr. Fishman. I don't want it to be considered misleading
10 in any way.

11 Mr. Clark. That would be a major point.

12 BY MR. CLARK:

13 Q Mr. Keeney, you started with the Department in
14 1951. Was that immediately after getting out of law school?

15 A No, I was in private practice in Wilkes-Barre,
16 Pennsylvania, for one year, and then I was at the Federal
17 Trade Commission in New York for two-and-a-half months.

18 Q Okay. So you graduated from law school in 1950 or
19 1949?

20 A 1949.

21 Q With the amendment that you have made on the one
22 entry --

23 A It is an amendment only since I am sure they took it
24 from the administrative file, but that was how I was
25 classified administratively for pay purposes and so forth, but

1 I was actually Deputy Chief of the Organized Crime Section.

2 Q Okay. Clarification, let's say, then.

3 A I don't feel strongly about it.

4 Q Okay.

5 Other than that, is the document fairly accurate as to
6 the times and the roles?

7 A Yes, it is.

8 Q So then for approximately 15 years in the Department
9 you were a trial attorney in different sections?

10 A Uh-huh, uh-huh.

11 Q Approximately how many trials did you actually try
12 while you were a trial attorney?

13 A Six or seven.

14 Q Okay. And do you remember in what areas they were?

15 A Contempt of Congress, Smith Act, which is conspiracy
16 to overthrow the government, interstate gambling.

17 Q Okay. So that the Smith Act prosecution would have
18 been while you were in the Internal Security Division?

19 A Internal Security Division, yes.

20 Q Then the gambling would have been in the Organized
21 Crime and Racketeering Section?

22 A Right.

23 Q You were never, then, as a trial attorney in a fraud
24 section, or were you?

25 A I was never a trial attorney, that is right. My

1 only role in the Fraud Section was as chief of the section.

2 Q Okay.

3 Now, I take it that between 1973 and the present when you
4 have served as the Deputy Assistant Attorney General, you have
5 acted as chief of various sections at various times?

6 A Supervised various sections, yes.

7 Q Okay.

8 Can you list for us the sections that you supervised and
9 the approximate times that you did?

10 A Well, that is a little difficult. Let me just take
11 a shot at it. Presently, I supervise Organized Crime and
12 Racketeering, Public Integrity, and the Office of Enforcement
13 Operations. I supervised them for the last 10-plus years.
14 Prior to that at various times I supervised the Fraud Section,
15 and as Principal Deputy and as Acting Assistant Attorney
16 General I have supervised all of them at one point or another.

17 Q Okay.

18 Maybe you can help me out by explaining what you mean by
19 your last statement?

20 A You mean as Principal Deputy?

21 Q Yes.

22 A As Principal Deputy, I am consulted from time to
23 time with respect to problems in any of the sections offices.

24 Q When you say Principal Deputy, you mean within the
25 Criminal Division?

1 A Yes, yes, within the Criminal Division.

2 Q Okay.

3 And so the Fraud Section, the Organized Crime Section,
4 Public Integrity Section, each of those sections has its own
5 chief?

6 A Yes.

7 Q Is that accurate?

8 A Yes, each has its own chief or director, as the case
9 may be, for the offices.

10 Q Okay. Then I am just trying to get an idea of the
11 hierarchy. You have the Criminal Division Chief and Assistant
12 Attorney General?

13 A Right.

14 Q And how many deputies?

15 A We have five at the moment.

16 Q Okay. And each of the five has responsibility for a
17 certain number of sections within the Criminal Division?

18 A That is right.

19 Q Okay. And are each of the five deputies on the same
20 level or is one considered the Principal Deputy and therefore
21 superior to the other four?

22 A Well, it is really a situation of equals. I am the
23 Principal Deputy and the Senior Deputy, but each one has his
24 own area of responsibilities, and for the most part, they
25 operate, each operates on his own.

1 Q Okay.

2 A As I say, from time to time they will consult me
3 with respect to problems, but each is on his own.

4 Q Okay.

5 Now, on this single page document that I have shown you,
6 there is a note that you served as the Acting Assistant
7 Attorney General in the Criminal Division from January 20,
8 1993 to November 22, 1993. Are those dates accurate
9 generally?

10 A Generally, yes.

11 Q In that instance, there is no appointed chief; is
12 that correct? So you are acting temporarily?

13 A I am acting temporarily as the Assistant Attorney
14 General.

15 Q Prior to this period, January 20, 1993 to November
16 22, 1993, there were other periods when you were the Acting
17 Assistant Attorney General?

18 A Yes. I have acted in all situations where the
19 Assistant Attorney General has left and a successor is
20 pending.

21 Q Okay. When did that start?

22 A It started when Henry Peterson left in the end of
23 1974, I think.

24 Q Okay. So that would be approximately how many
25 times?

1 A I think the present time is my ninth.

2 Q Now, within the Department do the people --
3 withdrawn. Does the Criminal Division Chief have the --

4 Mr. Fishman. Can I just make a suggestion, instead of
5 calling it the Criminal Division Chief which may lead to some
6 confusion because the section chiefs are chiefs, if you could
7 refer to it as the Assistant Attorney General for the Criminal
8 Division, I think it would probably eliminate confusion.

9 Mr. Clark. Fine.

10 BY MR. CLARK:

11 Q Does the Assistant Attorney General for the Criminal
12 Division have the ability to appoint his or her own deputies?

13 A Yes, subject to the approval of the Attorney
14 General.

15 Q Okay.

16 Ultimately, then, it is the Attorney General's decision?

17 A Yes.

18 Q And so it is conceivable that a person could be
19 removed from the Office of Deputy Assistant Attorney General
20 within the Criminal Division by the Attorney General?

21 A Yes.

22 I might point out here for a point of clarity, there are
23 two types of Deputy Assistant Attorney Generals, one is the
24 career, and the other is the noncareer. The noncareers
25 usually change with the administration.

1 Q Okay.

2 By that you are talking about the number 2 official in
3 the Department, the Deputy Attorney General or are you talking
4 about the Deputy Attorney General underneath --

5 Mr. Fishman. Deputy Assistant Attorney General.

6 BY MR. CLARK:

7 Q Underneath the Assistant Attorney General?

8 A Underneath the Assistant Attorney General there are
9 two career deputies, I guess there are three now, and two
10 noncareer.

11 Q Okay.

12 Then let me focus my question -- and thank you, I
13 appreciate it.

14 Can the career deputies, can they be asked to move out of
15 the Deputy Assistant Attorney General position by the Attorney
16 General?

17 A By the assistant -- well, yes, the answer is yes.

18 Q Okay.

19 Or by the Assistant Attorney General for the Criminal
20 Division as well?

21 A Well, I would say the Assistant Attorney General for
22 the Criminal Division does it, but as a matter of internal
23 procedure I don't think any Assistant Attorney General does
24 that without at least notifying the Attorney General or the
25 Deputy Attorney General.

1 Q Okay.

2 And have you had the opportunity to ever testify before
3 Congress on legislative matters?

4 A I have testified innumerable times before Congress.

5 Q Okay.

6 And the times that you have testified, have you always
7 testified on matters that you had specifically personally
8 researched?

9 A No.

10 Q Okay.

11 Many times you were a spokesperson or a representative?

12 A Spokesperson, right.

13 Q On those occasions or -- withdrawn.

14 As a general matter in that regard, who would select you
15 or would you just go up there yourself?

16 A No, I don't go up there myself. It is a fluid
17 situation. Either the Attorney General, Assistant Attorney
18 General, Criminal, would ask me to do it, or the Office of
19 Legislative Affairs would ask me to do it.

20 Q Okay.

21 So in those situations there are many different people
22 who could be asked to perform that task on behalf of the
23 Department?

24 A Well, usually it would be limited. For the most
25 part, we confine our testimony to Deputy Assistant Attorney

1 Generals and above, so when you say many, although there are
2 exceptions, the general rule is that it is my level or above
3 that testifies.

4 Q Okay.

5 So it could be at least five people?

6 A Right.

7 Q Within the Criminal Division or it could be the
8 Assistant Attorney General for the Criminal Division
9 personally?

10 A Right, or it could be the deputy, it could be the
11 Attorney General or one of their staff.

12 Q Okay.

13 When did you first become aware that there was a matter
14 in which the then Governor of Arkansas, Mr. Clinton's name had
15 arisen?

16 A When we got the urgent reports that were sent
17 through the Executive Office of the United States Attorney, so
18 we got a copy of it, indicating that the Clintons were
19 potential witnesses in the Madison Guaranty matter.

20 Q Okay.

21 Do you know who you got that urgent report from?

22 A Well, it was sent in to the Executive Office for
23 United States Attorneys, and then it was distributed in the
24 normal course to, among other people, the Criminal Division.

25 Q And was this at or about the time that the urgent

1 report was dated or was it sometime afterwards?

2 A I think it was fairly contemporaneous.

3 Q And when you got that did you discuss the matter
4 with anybody?

5 A I may have discussed it with Bob Mueller who was
6 then the Assistant Attorney General. I may have also
7 discussed it with Gerald MacDowell who was then Chief of the
8 Fraud Section, since it was a fraud matter.

9 Q How about David Margolis?

10 A I may have. Well, I am not sure. At that time
11 Margolis was in the Criminal Division, he was an Acting Deputy
12 in the Criminal Division. Conceivably, I discussed it with
13 him. I have no specific recollection.

14 Q When you say he was an Acting Deputy in the Criminal
15 Division, do you mean he was in one of the five positions that
16 you were in?

17 A Right.

18 Q Okay.

19 So you were peers?

20 A Uh-huh.

21 Q And what do you remember -- well, did you take any
22 action as a result of seeing that?

23 A No.

24 Q Okay.

25 What do you recall being the next time that you had any

1 involvement with this matter?

2 A Well, when we saw the memorandum or letter, whatever
3 it was, that the then United States Attorney sent to the
4 Special Agent in Charge of the FBI in Little Rock.

5 Q Okay.

6 And approximately -- withdrawn.

7 Did you see that letter approximately contemporaneously
8 to its date or was it sometime after?

9 A I think I saw it sometime later that month, October
10 of 1992, I believe.

11 Q So then you did not participate in a meeting that
12 Bob Mueller and Ira Raphaelson had with people from the FBI
13 concerning the urgent report in October?

14 A I don't recall participating. I could well have
15 participated. I attend a lot of meetings, but I don't
16 specifically recall attending that.

17 Q By the way, as a general matter, do you take a lot
18 of notes of meetings that you attend?

19 A Normally, no. I usually take very few notes. The
20 only time I take notes is, not the only time, but my practice
21 is to take notes when there is something involved that I am
22 going to have to take some action with respect to or the
23 matter is particularly complicated so I make notes to try to
24 make sense of it.

25 Q Are there occasions when you send matters on to

1 other people in the Department to act upon?

2 A Yes.

3 Q Okay.

4 Is it your practice to be a memo writer, like a cover
5 memo?

6 A I am a buck slip guy.

7 Q Okay.

8 Can you just explain so we are on the same wavelength?

9 A A buck slip is a form with a place for the addressee
10 and usually with the sender's name on the bottom, stamped on
11 the bottom. What I usually do is handwrite, in my own
12 handwriting I send the document on with whatever direction I
13 think is appropriate.

14 Q Okay.

15 And are there occasions when somebody might send you a
16 memo and you might send it on to somebody else and just write
17 on the other person's memo?

18 A Yes. Frequently, I would write on the top there,
19 John Doe, and send it on, and if I had, usually more noted, if
20 I had some specific concerns, I would usually put a buck slip
21 or mark along the side of the portion that I found of interest
22 and maybe say, I agree, I disagree, or we should check this or
23 something like that.

24 Q Mr. Keeney, this is a document that was produced to
25 us by the Department. It is a single page. It doesn't appear

1 to have any Bates stamp number, so I will describe it. It
2 appears to be a form document. At the top right-hand side
3 there is a date which is filled in Thursday, 8-13-92, and
4 there are some columns on the document from left to right,
5 completed, time. And under time there are two subcategories,
6 in and out, next category is to/from, then the next one is
7 phone no., which I believe stands for number, and then next is
8 message. Okay. And it has been represented to us that this
9 is from your phone logs?

10 A My secretary's phone logs, yes, that she keeps for
11 me.

12 Q Okay.

13 Can you explain to me, if you know, the way that the time
14 in out and completed columns work, looking at this document?

15 A Well, I don't know what the "out" is. The "in"
16 obviously is the time it was received, and normally they
17 indicate on the form whether or not I talked to the person or
18 it might be will call back, the person will call back.

19 Q Okay.

20 If it is marked with a check under the completed column,
21 is it your understanding that that means you spoke to the
22 person?

23 A I would be guessing. You would have to ask my
24 secretary. I don't know, but my guess is here I did, yes,
25 because there is no indication that -- usually they indicate

1 in some fashion the call was completed.

2 Q Okay.

3 Mr. Sharman. Let me interrupt just briefly, and
4 Mr. Fishman has indicated to me by sign language that might be
5 useful if there is not a Bates stamp on it, just for informal
6 purposes, to mark a document like Keeney 1, Keeney 2. Does
7 that make sense?

8 Mr. Clark. That is fine. So why don't we mark the
9 first document Keeney 1.

10 Mr. Fishman. Why don't we make it initials, JCK 1?

11 Mr. Clark. That is fine. That is the document
12 describing Mr. Keeney's tenure in the Department.

13 And then we will call JCK 2 this second document which is
14 a page from Mr. Keeney's phone logs as maintained by his
15 secretary.

16 BY MR. CLARK:

17 Q Is your current secretary the same secretary you had
18 in 1992?

19 A My current -- no. No, she is not.

20 Q Okay.

21 Can you tell me the name of your secretary in 1992?

22 A I think it was Marie Rogers.

23 Q Is she still employed by the Department, to your
24 knowledge?

25 A No.

1 Q Does your current secretary use the same log system?

2 A She uses something similar. I don't know whether it
3 is the same or not.

4 Q You never asked Ms. Rogers to explain her system of
5 keeping your calls to you?

6 A No.

7 Q Do you recognize the name Chuck Banks?

8 A Chuck Banks, yes.

9 Q Okay.

10 When is your earliest dealing with Chuck Banks, if you
11 remember?

12 A It probably was sometime in 1992 or late 1991.

13 Q And do you recall whether that first dealing with
14 Mr. Banks was in connection with this matter involving the
15 Clintons?

16 A It was not.

17 Q It was not, okay.

18 And was there only one matter that you were involved with
19 Mr. Banks in that period, 1991 and 1992?

20 A There could have been one or two others, but I don't
21 recall any others. I recall one specifically because it was a
22 conflict between his office and another United States
23 Attorney's office, and I was trying to resolve it.

24 Q A potential recusal situation?

25 A Yeah, possibly that was the situation, yes, but that

1 was not the issue.

2 Mr. Fishman. I am sorry, what was not issue?

3 The Witness. The recusal was really not the issue I was
4 concerned with, it was a conflict between two offices, and I
5 was trying to resolve it.

6 BY MR. CLARK:

7 Q As to who might prosecute a matter?

8 A Well, it is a little more complicated than that
9 because you are dealing with -- first, there was a subject in
10 one district, a witness in another district, and that was the
11 kind of an issue. The handling of it was concerned, so I got
12 involved in it, but it has nothing to do with this.

13 Q Okay.

14 And how did it come about that you got involved in the
15 matter as opposed to any other?

16 A Presumably, one of the ~~United States Attorneys~~ asked
17 me to get involved, but that is my best recollection.

18 Q And was there sort of -- was there some Department
19 policy or directive that would have -- that a U.S. Attorney
20 would have looked to and said John Keeney as opposed to some
21 other person is the person to call?

22 A No.

23 Q Would it be -- would it have been because of your
24 supervision of certain sections within the Criminal Division?

25 A I don't think so. I think it was because the United

1 States Attorney had a problem and raised it with me because
2 she knew me.

3 Q Okay.

4 Mr. Banks was not a person that you knew personally
5 before he became U.S. Attorney?

6 A I am not sure I ever met Banks. As I say, I have
7 talked with him on the phone, but I am not sure I ever met
8 him.

9 The Witness. This is Chuck Owens, not Chuck Banks.

10 Mr. Clark. I understand that.

11 The Witness. Okay.

12 BY MR. CLARK:

13 Q We will mark now as -- well, actually these do have
14 Bates stamp numbers. One is cut off, two are cut off, but
15 they appear to be A 000183, A 000184, and A 000185.

16 I will further describe them, 000184 is a single page,
17 again Mr. Keeney's telephone logs, dated Friday, 9-4-92;
18 A 000183 is dated Tuesday, 9-8-92; and A 000185 is dated
19 Wednesday, 9-9.

20 Mr. Fishman. I guess they were stamped in the wrong
21 order. Our mistake.

22 Mr. Clark. It is not a mistake necessarily.

23 BY MR. CLARK:

24 Q So Mr. Keeney, we now have three more pages from the
25 telephone logs that your secretary maintained, and these all

1 reflect a call either to or from Chuck Banks, U.S. Attorney
2 Charles Banks, and on the 4th and the 8th, it has WCB.

3 Do you know what WCB stands for?

4 A Will call back.

5 Q Okay.

6 Then on the 9th under the area, the document that says
7 message, it is blank, but in the completed column there is a
8 check mark?

9 A I assume that means I talked to him.

10 Q Now, this was, or the 4th was two days after
11 Mr. Banks received the original referral from the Resolution
12 Trust Corporation concerning Madison Guaranty Savings and
13 Loan. Does looking at these documents refresh your
14 recollection that Mr. Banks discussed Madison Guaranty Savings
15 and Loan or Bill Clinton or Mrs. Clinton or any matter related
16 to that when you spoke to him on September 9th of 1992?

17 A It does not. I have no idea what I talked to him
18 about.

19 Q Later in September of 1992, did become aware of
20 press rumors that Mr. Clinton was possibly the subject of a
21 financial institution fraud investigation?

22 A September 1992?

23 Q Yes.

24 A Well, at one time, at one point, I became aware of
25 the fact that New York Times reporter was developing a story

1 based upon his interviews with judge, defending one of the
2 cases, Judge Hale, if that is what you are referring to.

3 Q Well, that wouldn't have been until 1993 sometime,
4 wouldn't it have been?

5 A Oh, I am sure I got my years mixed up, excuse me.

6 Q I am referring to September of 1992, before the
7 election.

8 A I don't have any recollection of knowledge with
9 respect to the involvements of the Clintons until we saw the
10 urgent report which we discussed earlier.

11 Q Okay.

12 A It is conceivable that he did, but I have no
13 recollection of it.

14 Q Okay.

15 Do you know Ira Raphaelson?

16 A I do.

17 Q Okay.

18 How do you know Mr. Raphaelson?

19 A He was the -- first, he was Acting United States
20 Attorney in Chicago, then he came in the Department as Special
21 Counsel for Banking Matters. I don't know what his title was,
22 but he was a special counsel, in effect, for banking matters.

23 Q And approximately what period of time was he in that
24 position, if you remember?

25 A Well, he left at the end of the Bush administration

1 and he was there for a year and a half, two years, something
2 like that.

3 Q Okay.

4 And do you know what office he worked out of? I mean,
5 was he underneath the Associate Attorney General, the Deputy
6 Attorney General, the Attorney General, do you know?

7 A He had a close working relationship with both.
8 Technically, he was probably out of the Deputy's office, but I
9 can't really recall.

10 Q Okay.

11 I think you were about to say he had a close working
12 relationship with some people?

13 A With the Attorney General and with the Deputy
14 Attorney General.

15 Q Okay.

16 And are you referring to William Barr when you say the
17 Attorney General?

18 A Yes.

19 Q Okay.

20 Was it just Mr. Barr or both Mr. Thornburgh and Mr. Barr?

21 A I was referring to Mr. Barr.

22 Q Okay.

23 And by the Deputy Attorney General, who individually were
24 you referring to?

25 A George Terwilliger.

1 Q Okay.

2 I am not sure that we were on the same wavelength
3 precisely before, so I am just going to ask it again. Did you
4 have any awareness in September 1992 that there were press
5 inquiries about whether the Department had an investigation
6 involving President Clinton?

7 A I don't know. I don't know whether they had such an
8 awareness.

9 Q Did Ira Raphaelson ever ask you whether you knew
10 anything about that?

11 A I don't know. He may have. I don't rule out the
12 possibility, but I have no recollection of it.

13 Q Do you know an individual named Fred Verinder?

14 A Yes, I do.

15 Q How do you know Mr. Verinder?

16 A He was an official of the Criminal Investigations
17 Division of the FBI.

18 Q For the record that is V-e-r-i-n-d-e-r.

19 Approximately, how long have you known Mr. Verinder?

20 A I knew him from the time that he came back to FBI
21 headquarters. I don't know when that was. I would say I
22 worked with him for two, maybe three years.

23 Q Do you recall whether he was at headquarters in
24 1992?

25 A I think he was. If there are logs showing me

1 talking to him, I talked to him as a headquarters official. I
2 never, don't recall ever having any contact with him. I am
3 not even sure I knew him when he was out in the field.

4 Q Okay.

5 And what was his area of specialty in 1992, to your
6 knowledge?

7 A I don't know. I had a wide variety of contacts with
8 him, covering a lot of different type matters. He was -- he
9 ultimately was a Deputy Assistant Director in the Criminal
10 Investigative Division. I don't know whether he started out
11 in that capacity or not, but he had some wide-ranging
12 responsibilities.

13 Q To your knowledge, in 1992, were fraud
14 investigations within the area of his responsibilities?

15 A I don't know. I might explain it, Verinder is one
16 of the people I got to know over there if I wanted to find out
17 something with respect to what the Bureau was doing or I
18 wanted to make sure the Bureau did something. He is one of
19 the people I would call.

20 Q In other words, he and you had communications about
21 official matters that were of interest to either or both the
22 Department and the FBI?

23 A Right. Frequently, yes.

24 Q Okay.

25 So you might pick up the phone and call him and ask him

1 to find out whether the Bureau had an investigation in a
2 particular instance?

3 A Exactly.

4 Q Do you recall if you ever discussed with
5 Mr. Verinder in October or September of 1992 this matter that
6 might involve then-Governor Clinton?

7 A Conceivably, I did. I have no specific
8 recollection, but it is entirely possible.

9 Q Okay, Mr. Keeney, you should have in front of you a
10 document, a multi-page document. The first page is marked
11 Bates stamped No. 007128 A, and the last page should be Bates
12 stamped 007151. Just thumbing through it, they should be
13 consecutively numbered, those pages.

14 I would ask you to look at the very front page, and there
15 is a handwritten report talking about page 7128-A. It is a
16 photocopy. It appears a Post It has been attached to a
17 document with some handwriting on it. Do you recognize the
18 handwriting on the Post It?

19 A No, I do not.

20 Q Okay.

21 That page 7128-A, underneath the Post It there is on the
22 top right-hand side the Department of Justice Seal and then
23 the Post It itself covers some language. Do you know what
24 language is covered by the Post It?

25 A You mean this?

1 Q Yes.

2 A What do you mean what language is covered by it?

3 Q In other words, there is some words.

4 A Madison Guaranty Savings and Loan.

5 Q Underneath the Post It.

6 A Oh, that is "limited official use."

7 Q Okay.

8 Is that a document or a form document that the Department
9 generally uses or an agency, or both?

10 A The Department uses it. I don't know what agencies
11 use it. It is a nonclassified category, sensitive
12 information.

13 Q Mr. Keeney, you now should have in front of you a
14 multi-page document, 007181 through and including 007191?

15 A I do.

16 Q And you are familiar with the form of this document;
17 is that correct?

18 A Yeah.

19 Q Okay.

20 And can you just describe for the record the form of the
21 document?

22 A It is a communication from the Little Rock Office of
23 the FBI to the Director. I guess, common parlance, it is
24 called, I would say airtel, but I noticed here it is described
25 as a teletype.

1 Q What you are talking about is the upper left-hand
2 corner there are various means of transmitting?

3 A Yes, this was probably a teletype.

4 Q Do you know what the difference is between an airtel
5 and a teletype?

6 A No, and I don't know why they use one and not the
7 other, I have no idea.

8 Q There is some handwriting at the top right-hand side
9 of the first page, 007181. Do you recognize that handwriting?

10 A It looks as if it might be Bob Mueller's, but I am
11 not sure. I can't read it.

12 Q Did you see this document in October of 1992?

13 A My guess is that I did, but I can't say
14 categorically. In the normal course, I would see something
15 like this. My guess is that I did see it.

16 Q Do you recall having a discussion with Bob Mueller
17 about this document?

18 A I don't, but in the normal course I would have had a
19 discussion with Bob Mueller with respect to a document like
20 this, yes.

21 Q If you flip through the pages of it, you will notice
22 that there is certain portions underlined, specifically I
23 would refer you to page 007187, at the bottom of that page,
24 beginning with the line that starts: "It is the opinion of
25 Little Rock." And also if you flip to page 007189, there is

1 some more underlining towards the center of the page, then on
2 page 007190, in the center of the page again there is some
3 underlining. Would it be fair to say that the three areas in
4 the document underlined concern the Clintons?

5 A The 90 does, the 89 does, the 87 does, yes.

6 Q And your testimony, I believe, is it would not have
7 been unusual for you to discuss this with Mr. Mueller, but you
8 have no specific recollection?

9 A I have no specific recollection. And I might just
10 add for your edification that the marking that is on there is
11 the type that I make, so it could be mine.

12 Q You are referring to the underlining itself?

13 A Yes, yes.

14 Q There is nothing distinctive about the underlining
15 itself that tells you that it is yours and no other person's,
16 is there?

17 A No. But, there isn't -- but I wouldn't be surprised
18 if it were mine, that is what I am trying to convey.

19 Q I appreciate that.

20 Mr. Keeney, you now should have in front of you a
21 multi-page document, or it is a series of documents that are
22 stapled together, and they should be consecutively numbered
23 beginning with 007157 and proceeding through and including
24 007180.

25 A Yes, okay, I have it.

1 Q The first page 007157, appears to be a copy of a
2 discrete document, and there is some handwriting on it. It is
3 a U.S. Department of Justice Criminal Division form. Do you
4 recognize the handwriting on that document?

5 A It looks like Bob Mueller.

6 Q And does it appear that there are some numbers there
7 that might be a date?

8 A 10-9-92.

9 Q Okay.

10 And JCK is you?

11 A Is me.

12 Q Can you read the message on that front page?

13 A "Let's discuss after you have read."

14 Q Now, if you flip through this collection of
15 documents, there is a copy of the October 7th urgent report,
16 that is 007159. The next page ~~appears to be a~~ cover letter
17 from the Resolution Trust Corporation dated September 1, 1992,
18 to the Honorable Charles Banks, U.S. Attorney, Eastern
19 District of Arkansas, that is 007160, and then behind that,
20 pages 007161 through and including 007180, appears to be a
21 single document, a Resolution Trust Corporation criminal
22 referral form. Is that what you have?

23 A Yes.

24 Q Now, prior to October of 1992, had you seen forms
25 similar to this?

1 Mr. Fishman. I am sorry, when you say forms similar, you
2 mean the urgent report form or the referral form?

3 Mr. Clark. I am referring to the referral form.

4 The Witness. I don't know, but it is almost inevitable
5 that I would have, yes, from time to time even though I didn't
6 supervise the Fraud Section.

7 BY MR. CLARK:

8 Q When you saw this one in October of 1992, did you
9 have an understanding of the function of this document?

10 A If I understand you correctly, it is a document
11 which refers to the United States Attorney, for prosecutor
12 consideration, a certain set of facts in the banking area
13 based on an investigation by, I guess, it is the RTC.

14 Q Okay.

15 You are familiar with the term "prosecutive memo"?

16 A Yes.

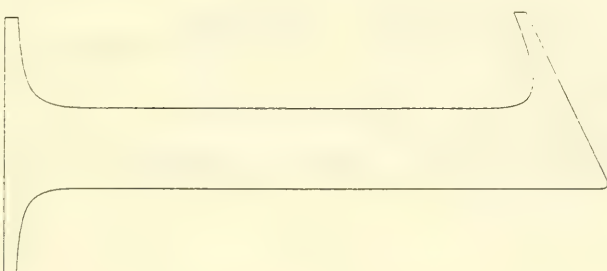
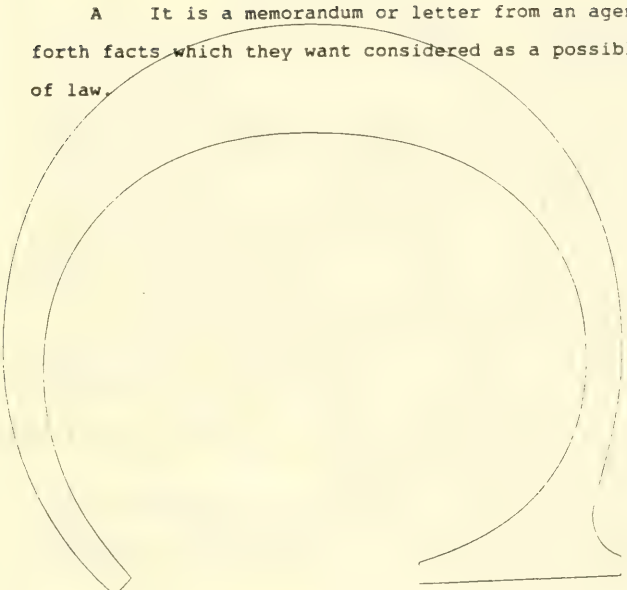
17 Q Okay.

18 Is there a prosecutive memo that is distinct from an
19 investigative memo?

20 A There is in my mind. The prosecutive memorandum is,
21 to my mind, a document that is prepared by a prosecutor
22 analyzing a factual situation and making a recommendation as
23 to whether or not to prosecute.

24 Q What would, in your mind, an investigative memo be
25 generally speaking?

1 A It is a memorandum or letter from an agency setting
2 forth facts which they want considered as a possible violation
3 of law.
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1 RPTS MCCALLEY

2 DCMN GALLACHER

3 [11:20 a.m.]

4 Q And it doesn't necessarily have to be, but it is
5 conceivable that an investigative memo could come at a very
6 early point in an investigation.

7 A Yes, if they're seeking the advice of a United
8 States Attorney with respect to whether or not if the facts
9 are developed that he or she would prosecute, yes.

10 Q With regard to the RTC criminal referral form, did
11 you have an understanding in October of 1992 whether this was
12 supposed to be a description of a trial-ready case or whether
13 it was a more preliminary aspect?

14 A Well, any referral from an investigative agency I
15 don't consider, except in a very rare situation, it would be a
16 trial-ready document.

17 Q Let me phrase it a little bit differently. Did you
18 have an understanding in October 1992 that this document
19 reflected an investigation that was nearly completed or it was
20 a document concerning the very early stages or a suggestion
21 that an investigation would be undertaken?

22 Mr. Fishman. Do you mean this document in particular or
23 generically?

24 Mr. Clark. Generically.

25 The Witness. Well, a referral from an agency as far as

1 I'm concerned, particularly an agency like RTC, is a document
2 for consideration by the United States Attorney as to whether
3 or not to prosecute. If -- do I consider it a final document,
4 no. And it's conceivable that the United States Attorney
5 might request an additional investigation to be done by the
6 agency itself or in conjunction with a grand jury that the
7 United States Attorney might conduct.

8 BY MR. CLARK:

9 Q Okay. Were you aware in October of 1992 that the
10 Resolution Trust Corporation did not have the power to issue
11 grand jury subpoenas?

12 A Yeah, I was always aware of that.

13 Q And were you aware that -- well, withdrawn.

14 Do you know how, generically speaking, the criminal
15 referral forms came about?

16 A Came about?

17 Q Yes.

18 A No, I don't.

19 Q The process of their creation?

20 A No.

21 Q So in October of 1992, you did not have an
22 understanding that a working group that included the Attorney
23 General and various agency heads had created the referral
24 form?

25 Mr. Fishman. I'm sorry, just make sure, are you

1 suggesting through your question there was a working group
2 that the Attorney General himself participated, if that is the
3 question.

4 Mr. Clark. At some prior time.

5 Mr. Fishman. Okay. I am trying to figure out what your
6 question means in terms of who was where.

7 Mr. Clark. I will withdraw it.

8 BY MR. CLARK:

9 Q Mr. Keeney, were you aware in October of 1992 that
10 back in 1985 and 1986 the Attorney General and the heads of --
11 or representatives of various agencies had met and created the
12 criminal referral form for agencies to use?

13 A I may have been. I don't recall. At some point you
14 started my recollection that there had been some participation
15 by the Department in creating a form but I don't know whether
16 I knew at that time or not.

17 Q Okay. And you don't know, or do you -- withdrawn.
18 Were you aware in October of 1992 that according to the
19 agreement worked out amongst this working group these
20 documents were intended to be sent in at a very early time to
21 the U.S. Attorney and to an investigative agency like the FBI
22 to determine whether a matter might be investigated, as
23 opposed to being prosecuted?

24 A I'm aware that at some point in the white collar
25 crime area, particularly when dealing with Inspectors General,

1 there was a -- an encouragement of getting the reaction of the
2 FBI if they were the investigative agency and of the
3 prosecutor and the Assistant United States Attorney whether or
4 not it would be worthwhile to pursue this particular matter.

5 Q You now have another document in front of you,
6 multipage document, which we will mark as John Keeney 3, JCK
7 3. And this is some pages that were photocopied from the
8 Federal Banking Law Reporter, which is a commercial
9 clearinghouse publication. And it should be pages 6381
10 through 6390 inclusive.

11 Mr. Fishman. I am sorry, I don't think you misspoke.

12 Mr. Clark. The pages should be at the top.

13 Mr. Fishman. Oh, okay.

14 Mr. Keeney. The top.

15 Mr. Fishman. Sorry, we were looking at the bottom.

16 Mr. Clark. Sure.

17 BY MR. CLARK:

18 Q If you turn to the pages 6384 and what I do is I
19 direct your attention to the lower right-hand side of that
20 page, the last full paragraph that begins the working group.

21 A Okay.

22 Q And the definition of working group, just so that
23 you are aware of it, is on page 6381 in the very first
24 paragraph, which I will just read, quote, "The working group
25 is composed of senior officials of the U.S. Department of

1 Justice, Federal division, the Federal Bureau of
2 Investigation, the Board of Governors of the Federal Reserve
3 system, the Office of the Comptroller of the Currency, the
4 Federal Deposit Insurance Corporation, and the Federal Home
5 Loan Bank Board."

6 Mr. Fishman. I'm sorry -- okay, first paragraph.

7 Mr. Clark. Yes.

8 BY MR. CLARK:

9 Q Now on page 6384 of that paragraph that I have
10 referred you to, in the right-hand column, it says, quote,
11 "The working group considered whether to identify an
12 evidentiary standard for when criminal referrals are to be
13 made such as when," quote, "substantial evidence," close
14 quote, of crime has been discovered but determined not to do
15 so."

16 Often the preparers of criminal ~~referrals~~ are not in a
17 position to make such determinations, particularly when the
18 suspected crime requires evidence of, quote, "willfulness,"
19 close quote, or an, quote, "intent to defraud," close quote.
20 These are decisions to be made by Justice Department
21 representatives who prefer to be advised of the potential
22 crime early when it is first suspected by the supervisory
23 agencies which is a defined term. So that Justice may develop
24 the facts toward evaluation of a criminal prosecution.

25 Accordingly, paragraph five of the working group's

1 agreements provides ~~that referrals~~ of suspected criminal
2 violations shall be made at an early stage when the
3 supervisory agencies first obtain evidence to support a belief
4 that a crime has ~~been or may have~~ been committed.

5 My question is, did you have an understanding that that
6 was the standard that applied to criminal referrals such as --

7 A I'm aware of the existence of this and I did not
8 participate in any preparation of it. I'd also note that the
9 referrals you are talking about, there's no indication that
10 the -- that the RTC went directly to the fraud section.

11 Q My question is in October of 1992, were you aware
12 that the standard that governed these referrals generally was
13 get the information to us sooner rather than later?

14 A I think so, yeah.

15 Q So that meant that there could be situations when a
16 referral initiated an investigation which might take some
17 time.

18 A Well, I would put it a little bit differently. The
19 purpose of the document was to have the investigative agency
20 in touch with the prosecutor at an early stage so that you
21 could have effective utilization of resources and that the
22 agency would not put a lot of resources into a matter in
23 which -- which the Department was prepared at an early stage
24 to say would not be prosecuted. That's the whole purpose of
25 this.

1 Q Well, you say the whole purpose.

2 A Well, the purpose, let me take the whole out of
3 that. It was -- it was a question of utilization because we
4 had the IGs coming on, becoming very active during this period
5 and this was a white collar crime program and a notification
6 program that tried to make the most effective utilization of
7 their resources and the resources of other investigative
8 agencies.

9 Q So in other words, these regulatory agencies were
10 performing a useful service by undertaking some -- some
11 investigation on their own and presenting facts so that the
12 investigating agencies could make a determination without
13 having to do that investigation themselves.

14 A Yes.

15 Q And you were aware that there were occasions when an
16 investigating agency such as the Bureau, the Federal Bureau of
17 Investigation, took facts that were stated in referrals and
18 opened up investigations.

19 A Yes.

20 Q Now, this particular document, which appears to have
21 been sent to you in October of 1992, do you have a specific
22 recollection of receiving the document back then?

23 A No, I don't.

24 Q Okay. If you turn --

25 A The likelihood is that I did receive it.

1 Q If you turn to page 007165. There is some marking
2 on the typed page in various places. For example, in the
3 right-hand margin, a couple of times there is what appear to
4 be two separate notations or figures. Do you know what those
5 are?

6 A Well, this looks as if it's mine.

7 Q You mean your handwriting?

8 A My handwriting. "SL" would be statute of
9 limitations, on the top there. Same question down here in the
10 next to the last paragraph. It has the statute of limitations
11 ruling.

12 Q And on this page, again, there are certain areas
13 that are underlined and then in one instance there is -- or
14 two instances there are some matters circled.

15 Would it be consistent with your practice for you to have
16 made those?

17 A Yes.

18 Q Markings as well?

19 A It would.

20 Q Now, with regard to the statute of limitation
21 question, do you know whether you investigated that further at
22 the time?

23 A I don't know but -- I don't know.

24 Q Okay.

25 A Whether I investigated or the Department, I don't

1 know.

2 Q Whether you did?

3 A I did not, no.

4 Q Now, generally speaking -- withdrawn. Why don't you
5 just, so we are on the same wavelength, explain what a statute
6 of limitation is.

7 A Well, it's a statutory period of repose where crimes
8 committed after a certain period in the past are not allowed
9 to be prosecuted.

10 Q And is there generally one Federal statute of
11 limitation, in other words, one single period of time that
12 covers most Federal crimes?

13 A There is.

14 Q And how long is that period?

15 A It's five years.

16 Q So then, for instance, at the next to last paragraph
17 on page 007165 where you have May of 1985 circled, or someone
18 has circled it, and you have or someone has marked in the
19 right-hand "SL" question mark, that would be because at a
20 first glance there would be a problem in October of 1992 with
21 something that had been possibly committed back in May of
22 1985?

23 A Yes. But the reason for the question mark; is that
24 your question?

25 Q No, I -- I just -- I just wanted to get your

1 agreement that that would be --

2 A That would normally be barred by the regular normal
3 statute of limitations, yes.

4 Q Okay. But are there certain Federal crimes that
5 have lengthier statutes of limitation?

6 A Yeah. There's a banking statute which extends the
7 statute of limitations and I'm not exactly an expert in that
8 but --

9 Q Sure.

10 A It can go up to 10 years on a question -- if that is
11 my handwriting and I think it is. I was raising the question
12 that I had in my own mind as to whether or not the then new
13 statute was applicable and it was still viable for
14 prosecution.

15 Q Okay. If you turn to the very next page 007166, you
16 will note that on this page, towards the -- in the second
17 paragraph from the bottom, a bulleted paragraph, someone has
18 made a mark in the left-hand margin, appears to be like an
19 asterisk. Would you agree?

20 A Looks like an asterisk.

21 Q And then --

22 A Or an attempt at an asterisk.

23 Q And then someone has underlined the words "\$3,000 to
24 the Bill Clinton campaign" and then the next word which is not
25 underlined is "fund." Would this have been consistent --

1 would it have been consistent with your practice to have made
2 a marking such as appears in the left-hand column and to have
3 underlined those words?

4 A Normally, I don't use the asterisk.

5 Q Do you have a recollection of discussing this with
6 Mr. Mueller or with anyone else?

7 A No. But I probably did. The Assistant Attorney
8 General says read it and discuss it with me, I read it. That
9 seems to be my -- it's the 3,000 to the Bill Clinton campaign
10 fund, that's the type of thing that I would do. I would
11 underline it as a possible violation of the election campaign
12 laws.

13 Q Now, the document is -- the referral itself is 14 --
14 excuse me, it is approximately 20 pages long. And the
15 reference to the Bill Clinton campaign fund is not the only
16 incident that is reported in that ~~referral as a potential~~
17 criminal violation; is that your understanding?

18 A Give me that again, will you please?

19 Q Okay. Well, the document is approximately 20 pages
20 long and the section that describes potential or suspected
21 violations goes from page 5 through page 17; correct? It is
22 very lengthy. Can we agree on that?

23 A Yeah, we'll agree on that.

24 Q And, in fact, this document does not identify
25 Mr. Clinton as a person suspected of criminal activity, and

1 you can look at page -- pages 007162 through 7164, if you want
2 to check.

3 A Without having gone back through it, my general
4 understanding is that it doesn't identify the Clintons as
5 targets.

6 Q Sure. If you go to page 0071777 for a second, now
7 towards the center of the page, again, there is a certain
8 portion of this typed page that has been underlined,
9 specifically, quote, "those who allegedly stood to gain the
10 most benefit from these numerous and questionable interaccount
11 transactions," and then it goes on and the next part that is
12 underlined is, quote, "Bill and Hillary Rodham Clinton," close
13 quote. So it would be fair to say that if you didn't
14 underline this, Mr. Mueller may have underlined this and it is
15 possibly something that you discussed with him back in October
16 of 1992.

17 A Oh, very possible.

18 Q Okay. And so just to be clear, there are large
19 sections of this document that don't contain similar markings,
20 similar underlining.

21 A That's right.

22 Q Okay. Do you recall whether in October of 1992 you
23 were informed that the Justice would press this investigation
24 at an accelerated pace?

25 A I don't think so. The -- well, my understanding is

1 that there was a meeting which I may or may not have attended
2 with -- with the FBI, probably Larry Potts and Bob Mueller.
3 As a result of it, the Bureau was asked, the Bureau of Little
4 Rock was asked to make an evaluation of the allegations. So
5 if that's what you mean by an acceleration, the answer is yes,
6 accelerating getting sufficient facts to make a determination
7 as to whether or not immediate action was indicated.

8 Q You were not asked personally to take any steps to
9 advance this investigation at an accelerated speed, were you?

10 A I have no recollection and there's no indication
11 that I was. But I would have been part of the proces. The
12 acceleration was, I understand, the determination -- a
13 determination of the additional facts by the FBI in Little
14 Rock.

15 Q Mr. Keeney, you now should have in front of you a
16 document that is Bates stamped A 000145.

17 A I do.

18 Q And it is a multipage document. I believe it is
19 consecutively numbered through and including A 000168.

20 Mr. Fishman. Our copy is cut off but it looks like it.

21 BY MR. CLARK:

22 Q Okay. Do you recognize these pages?

23 A Well, they look like the -- my secretary's telephone
24 log.

25 Mr. Fishman. Telephone log?

1 Mr. Clark. Does this appear to be a calendar.

2 The Witness. Wait a minute, no, no, I'm sorry, it is a
3 calendar -- it's -- yeah. It appears to be a copy of my
4 calendar.

5 Mr. Clark. Okay.

6 Mr. Fishman. I think we should just put on the record
7 that the calendar pages and telephone logs of Mr. Keeney's
8 that were produced to the committee at the committee's request
9 dealt with a variety of contacts between Mr. Keeney and a
10 number of people who were entities identified by the
11 committee, the FBI, officials of the FBI, Mr. Hubbell and so
12 forth, and just so we are clear that they don't necessarily
13 relate to the subject matter of the committee's
14 investigation. In specific as it relates to Madison Guaranty
15 and Whitewater.

16 Mr. Clark. I understand that.

17 Mr. Fishman. I just want that to reflect that so if
18 people are looking at the documents and the transcript it is
19 correct.

20 BY MR. CLARK:

21 Q Mr. Keeney, in a piece of correspondence we received
22 from the department they represented that these were, in fact,
23 redacted, handwritten calendar pages, various ones over the
24 years 1992 and 1993 for yourself. We have not gotten a copy
25 of the page for October 8th of 1992 and that was the day on

1 which Bob Mueller and Ira Raphaelson met with officials from
2 the FBI, so what I would ask is if you would double check your
3 calendar to see whether you had that meeting listed.

4 Mr. Fishman. Okay.

5 Mr. Clark. Why don't we take about five minutes.

6 The Witness. All right.

7 [Brief Recess.]

8 BY MR. CLARK:

9 Q You should have now, Mr. Keeney, a multipage
10 document or a couple of documents. The first page is Bates
11 stamped 000500 and the pages are consecutively numbered
12 through 000505. Is that what you have?

13 A I do.

14 Q Okay. And the very front page, this appears to be a
15 singular document, a U.S. Department of Justice criminal
16 division blank piece of paper that ~~somebody has written~~ on
17 and, again, whose handwriting do you think this is?

18 A Well, on the top, Jerry MacDowell, FYI. That's
19 mine, and down at the bottom, I don't see us as involved at
20 this point; Bureau's position is reasonable. That's mine.
21 The JCK FYI and the initials are Bob Mueller's.

22 Q And that date appears to be 10/23?

23 A It does.

24 Q And if you go to page 00502, this appears to be a
25 memo written to Bob from Larry dated 10-19-92. Is that a fair

1 description?

2 A Yes.

3 Q Okay, do you know who Larry is?

4 A I assume it's Larry Potts, the Assistant Director of
5 the FBI.

6 Q Okay, and the memo, the form of the memo indicates
7 it is from the Federal Bureau of Investigation, Criminal
8 Investigative Division.

9 A Yes.

10 Q In 1992, October, was Mr. Potts in the Criminal
11 Investigative Division?

12 A Yes.

13 Q And Bob, you are not sure but based on the front
14 page, that is probably a reference to Bob Mueller?

15 A Yes.

16 Q Now, attached behind that ~~page is a three-page~~
17 document, 000503 through 505. You are familiar with this form
18 document?

19 A Yes.

20 Q Can you just identify the form?

21 A Well, it is a communication from the Bureau field
22 office in Little Rock again to the national office.

23 Q And that you can tell because it says what?

24 A It says, from FBI, Little Rock, to Director FBI.

25 Q In 1992, who was the director, just very briefly?

1 A Bill Sessions, I guess.

2 Q Now, if you turn to page 000504, it states in the
3 first paragraph, and I am going about the fifth line from the
4 bottom -- okay, withdrawn.

5 First of all, from looking at page 000503, the -- and
6 504, beginning at the last line of 503, this teletype refers
7 to the criminal referral from the Resolution Trust
8 Corporation; is that correct?

9 A Yeah.

10 Q Okay. Now, on page 000504, the middle of the first
11 paragraph, quote, "AUSA," close quote, you understand that
12 refers to Charles Banks.

13 A Yes.

14 Q Is that fair?

15 A Yes.

16 Q Okay. Quote, "U.S.A. ~~feels that the~~ limited data
17 furnished may indicate criminal activity on the part of
18 captioned subjects, James and Susan McDougal and Lisa
19 Anspaugh, A-N-S-P-A-U-G-H. However, U.S.A. is holding
20 provision of a prosecutive opinion regarding these subjects in
21 abeyance.

22 "As discussed in previous communications, James McDougal
23 was previously indicted for fraud related to the failure of
24 Madison Guaranty Savings and Loan and acquitted by jury. He
25 currently has no assets to pursue, is drawing disability

1 income, and is believed to reside in a trailer owned by a
2 friend. While the available facts indicate elements of one or
3 more Federal violations may exist, U.S.A. is considering the
4 likelihood of proving such violations and the manpower
5 opportunity cost to other priority investigations of pursuing
6 the McDougals a second time.

7 "Accordingly, Little Rock remains in a noninvestigative
8 posture regarding this matter and will not conduct any
9 investigation without the concurrence of U.S.A. and a positive
10 prosecutive opinion," close quote.

11 Now, that is -- that is some of the language that you
12 were commenting on in your note to both Bob Mueller and Jerry
13 MacDowell.

14 A I think it's MacDowell, my comments to MacDowell, I
15 think.

16 Q Okay. Meaning I don't see us involved?

17 A Right.

18 Q At this point?

19 A Yeah.

20 Q Okay. But the language that I read, that was part
21 of the report that you were commenting on that you agreed
22 with.

23 A I agreed, that's it, yes.

24 Q You are familiar with the term "prosecutive
25 discretion"?

1 A Uh-huh.

2 Q Mr. Keeney, can you explain what you understand that
3 term to mean?

4 A Prosecutive discretion is the exercise of a judgment
5 by a prosecutor whether to proceed criminally, and it
6 particularly refers to situations where there is a prima facie
7 case and there would be sufficient force for a grand jury to
8 return an indictment and the prosecutor has the discretion to
9 seek an indictment or not seek an indictment.

10 Q And so that would entail an analysis of certain
11 facts that might cause a person -- a putative defendant to be
12 perceived sympathetically by a jury; would that be a fact?

13 A That would be a fact, yes.

14 Q Okay. So some of the facts stated in this teletype
15 from Little Rock FBI office about Mr. McDougal's current
16 circumstances in October 1992, ~~they might be factors~~ that a
17 prosecutor would consider in deciding whether, regardless of
18 probable cause, whether to actually go ahead and pursue a
19 case?

20 A They would be, yes.

21 Q And you didn't think that that was a -- an improper
22 judgment based on what you saw in this teletype?

23 A I did not.

24 Q But just to be clear finally, there can be cases
25 where on the facts there would be sufficient evidence to

1 convict a person but the prosecutor could decide to exercise
2 discretion because of facts that don't go to the determination
3 of probable cause or guilt or innocence?

4 A Could be.

5 Q I would like to now shift and focus your attention
6 on the period in the beginning of 1993. Did there come a time
7 early in 1993 when you had some involvement with this matter
8 again?

9 A Yes.

10 Q Do you remember the circumstances of your first
11 involvement early in 1993?

12 A I think it related to a communication from AUSA
13 Banks in which he was recusing himself, and I think his
14 office -- he was recusing himself from participation in any
15 decision in the Madison Guaranty matter.

16 Q Okay. And do you remember what your role or what
17 part you played in the matter at that point?

18 A Well, there was a memorandum prepared for my
19 signature which was sent to the -- for my initials which was
20 sent to the Deputy Attorney General's office. I didn't sign
21 it. But I think I was aware of the fact it was being sent.

22 Q Okay. Would it be normal for other people to send
23 out memos under your name without your approval?

24 A Yes. We do that all the time. I sign out -- for
25 instance, the deputies sign out frequently memorandum from

1 Mrs. Harris, who is the Assistant Attorney General. But in
2 this case, I think I was actually informed of what was being
3 done.

4 Q And do you recall who informed you of that?

5 A Larry Gerson.

6 Q Can you just identify him, please?

7 A He was an acting Deputy Assistant Attorney General
8 at the time. And he supervised the fraud section.

9 Q So then he would have been in the same position in
10 the Department's hierarchy as you were?

11 A Yes.

12 Q When we were speaking earlier.

13 A Yes.

14 Q Now, at this time, you were the Acting Attorney
15 General for the entire?

16 A Assistant Attorney General.

17 Mr. Fishman. Just so we are for the time clear, we are
18 talking about?

19 Mr. Clark. February of 1993.

20 The Witness. Yeah.

21 Mr. Fishman. It is actually March I think but yes.

22 Mr. Clark. February and March, that period.

23 Mr. Fishman. Right.

24 BY MR. CLARK:

25 Q You were the Acting Assistant Attorney General for

1 the criminal division.

2 A I was.

3 Q Do you recall whether you had any discussions with
4 Jerry MacDowell prior to the creation of this memo regarding a
5 U.S.A. Banks' recusal request?

6 A Recusal? I don't recall any, but it would -- the
7 likelihood is that they did. I don't recall any.

8 Q Okay. Approximately how long has Mr. MacDowell been
9 in the Department?

10 A I think he's been there since '66 or '67.

11 Q Have the two of you worked in the same section of
12 the Department at any time?

13 A Yeah, we overlapped a little bit in the organized
14 crime section in the '60's.

15 Q Was there any time when the two of you were working
16 at the same time in the public integrity section?

17 A Well, I never worked in the public integrity
18 section.

19 Q Okay. Was there a time period when he was the
20 Assistant Attorney General with responsibility for the public
21 integrity section?

22 A Yes.

23 Mr. Fishman. I am sorry, the Assistant Attorney
24 General?

25 Mr. Clark. Or --

1 Mr. Fishman. MacDowell was never the Assistant.

2 The Witness. MacDowell was the chief of the public
3 integrity section.

4 Mr. Clark. Okay.

5 BY MR. CLARK:

6 Q And what period of time was that, approximately?

7 A Roughly '79 to about three years ago.

8 Q Okay. And was that during a period when you had --

9 A Maybe a little bit more.

10 Q All or part of that period you had oversight over
11 the public integrity section as your position as Deputy
12 Assistant Attorney General?

13 A Yes.

14 Q Is it fair to say that the two of you worked fairly
15 closely --

16 A Yes.

17 Q -- during that period of time?

18 A Yes.

19 Q Do you remember when he got shifted from public
20 integrity to fraud?

21 A No, I can't put the years on it but it was during
22 Bob Mueller's tenure, '92 or '92. I can't pinpoint.

23 Q Now, in February and March of 1993, there was a
24 period of time when there was no Deputy Attorney General; is
25 that correct?

1 A Uh-huh.

2 Q I think Stewart Gerson was the Acting Attorney
3 General for a period of time?

4 A [Nodding.]

5 Q And then Attorney General Reno started in
6 approximately when?

7 A In late March or early April.

8 Q Okay.

9 A She obviously was there on April 19th when the
10 meeting -- or prior, immediately prior to that. Somewhere on
11 or about April 1st.

12 Q And you are familiar with Webster Hubbell.

13 A I am.

14 Q And when did you meet Mr. Hubbell for the first
15 time?

16 A Early in the Clinton administration. Right after he
17 came on board, I guess as a special assistant or whatever he
18 came on board as.

19 Q Now --

20 A It would be January or February of '93.

21 Q For a period of time, he was not the Associate
22 Attorney General; is that correct?

23 A That's correct.

24 Q He had some other title.

25 A He had some other title. I don't remember

1 whether -- what it was, whether it was consultant, special
2 assistant or what it was, but he did not have the title of
3 Associate Attorney General.

4 Q During that period before he became Associate
5 Attorney General, was he involved with the criminal division?

6 A To some extent.

7 Q Would it have been on matters of general policy or
8 particular -- particular matters being handled by the criminal
9 division or both?

10 A Both.

11 Q For example, there was a period of time when you
12 were communicating with him regarding David Durenberger; is
13 that correct?

14 A That's correct.

15 Q And that was in relation to an investigation, a
16 criminal investigation, of then ~~Senator Durenberger~~. I don't
17 know if he had resigned at that point.

18 A No, he had not.

19 Q He had not. Okay.

20 A He was still a Senator at that time.

21 Q Okay, but that is what the matter involved,
22 correct?

23 A That is correct.

24 Q And why was Mr. -- why was Mr. Hubbell involved in
25 that matter?

1 A I -- I don't know. Stewart Gerson was also involved
2 and I guess he brought Hubbell in on it.

3 Q Okay. Was Mr. Hubbell voicing opinions as to
4 whether certain decisions should be made in that matter?

5 A I don't recall his --

6 Mr. Fishman. If I -- wait, wait.

7 Mr. Clark. I am not asking for the specifics.

8 Mr. Fishman. That is fine. I just want to be clear.

9 Mr. Clark. Yeah.

10 The Witness. I don't recall his -- Hubbell is kind of a
11 laid back guy. He doesn't say much. So I don't recall his
12 expressing any particular opinions with respect to Durenberger
13 or not.

14 BY MR. CLARK:

15 Q Were you working with him on a fairly close basis in
16 those early months or --

17 A Well, I would work with him on particular matters
18 and Durenberger's one of them. But usually they were matters
19 in which Stu Gerson was also involved and Gerson brought --
20 brought him in. He was an advisor to Gerson.

21 Q Okay. Did it occur to you at any point in that
22 period that Mr. Hubbell should not really be involved in
23 anything concerning any investigation of Madison Guaranty?

24 A I'm sure it did. I mean, that's -- that's part of
25 my responsibility, is to make certain that people should be

1 recused, that the need to do so is brought to their
2 attention.

3 Q Okay.

4 A And that never came up.

5 Q Okay. As far as you know the matter was never
6 specifically presented so that Mr. Hubbell might memorialize
7 the fact that he should not be apprised of facts concerning
8 the Madison investigation in that period, February and March
9 of --

10 A The matter was never presented to Hubbell, to my
11 knowledge.

12 Q I am going to hand you two separate documents at
13 this point, the first a -- both multipage documents. The
14 first is Bates stamped 006676. Page 77 is missing. But then
15 it is 6678 through and including 6682. And then the second
16 document is a three-page document, Bates stamped 014575
17 through and including 014577.

18 Mr. Fishman. I am sorry we only have one of them.

19 BY MR. CLARK:

20 Q And the first document I will describe. It is
21 actually two documents stapled together.

22 The first page, 0006676, is a memorandum to Douglas
23 Frazier from John Keeney dated March 19th, 1993. And pages
24 6678 through and including 6682 are a memorandum from Mark
25 MacDougall, M-A-C-D-O-U-G-A-L-L, to Gerald MacDowell.

1 The second document is titled "Correspondent Tracking
2 System, Department of Justice-Criminal Division.

3 Mr. Keeney, turning first to the document that starts
4 with 006676, Doug Frazier, are you familiar with him?

5 A Yes.

6 Q Approximately how long has Mr. Frazier worked for
7 the Department of Justice? Or had he?

8 A He's an Assistant United States Attorney. He's been
9 brought in from time to time for projects in the Department
10 and he was in the Deputy's office at this particular time.

11 Q Okay. And his title according to this document is
12 Associate Deputy Attorney General?

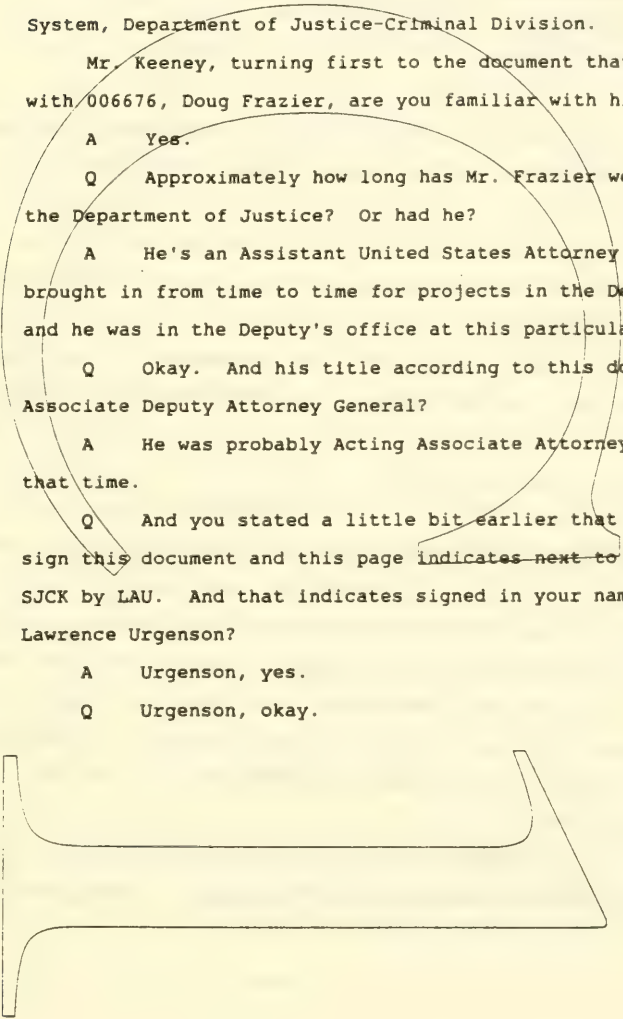
13 A He was probably Acting Associate Attorney General at
14 that time.

15 Q And you stated a little bit earlier that you didn't
16 sign this document and this page ~~indicates next to~~ your name
17 SJCK by LAU. And that indicates signed in your name by
18 Lawrence Urgenson?

19 A Urgenson, yes.

20 Q Urgenson, okay.

21
22
23
24
25



1 RPTS BLAZEJEWSKI

2 DCMN QUINTERO

3 [12:25 p.m.]

4 BY MR. CLARK:

5 Q Now, do you recall whether you discussed the text of
6 this memorandum with Mr. Urgenson before he sent this on to
7 Mr. Frazier?

8 A I don't recall discussing the text as such, but I do
9 have a hazy recollection of discussing with Urgenson and told
10 him and sent it out.

11 Q Now, in the text of this memorandum -- the subject,
12 by the way, for the record: Recusal by the U.S. Attorney's
13 Office for the Eastern District of Arkansas on a Resolution
14 Trust Corporation referral.

15 In the text it states: "We have reviewed the material in
16 the package and have concluded that ~~there is no~~ identifiable
17 basis for recusal by the United States Attorney. Further, we
18 would not question a decision by the United States Attorney to
19 decline further substantive action on the referral. A copy of
20 the Fraud Section's memorandum summarizing our views is
21 attached for your use and should you decide it is appropriate
22 for forwarding to the United States Attorney's Office in
23 Little Rock."

24 Do you recall if it was your decision that this matter
25 should be, this memo should be forwarded, if appropriate, to

1 Little Rock?

2 A I don't know whether it was my decision or whether
3 it was Urgenson's, but it is the type of thing we would
4 normally do.

5 Q So in 1993, there were other instances involving
6 requests for the Department's analysis of facts where
7 memoranda were sent out to U.S. Attorney's Offices?

8 A I don't recall in that time period, but I mean that
9 is done, if there is -- we frequently make our analysis
10 available to the United States Attorney's Offices.

11 Q Do you have any recollection whether you actually
12 read the memorandum that is attached?

13 A I do not. The best recollection would be that I did
14 not read it at the time.

15 Q On the memorandum in your name, 006676, at the top
16 left-hand side there are some figures which appear to be a set
17 of initials, then underneath that it has typed 3/2/93, and yet
18 the document is stamped with what appears to be March 19,
19 1993. Do you know why there is an apparent gap there of 17
20 days?

21 A I do not.

22 Q Is Mr. Urgenson still with the Department?

23 A No.

24 Q When did he leave, approximately?

25 A I think he left in late 1992. No, wait a minute,

1 that is not right. He left at or about this time.

2 If I didn't see this document with a name on it, this
3 date, I would say he left prior to the end of the last
4 administration, but it is somewhere during that general time
5 period.

6 Mr. Fishman. If you want to know what the exact date is,
7 I am sure we can get it for you. My recollection is that it
8 was later than Mr. Keeney recalls, but if you are interested
9 in the information --

10 Mr. Clark. We will talk about it later.

11 BY MR. CLARK:

12 Q Mr. Keeney, in situations where there is a review by
13 main Justice of a matter pending before a United States
14 Attorney, would you agree that there are two possible methods
15 of the Department analyzing a situation; number one, an
16 independent review from the beginning and, number two, a
17 review intended to support a position taken by a U.S.
18 Attorney?

19 Mr. Fishman. If I can interpose sort of --

20 Mr. Clark. Are you objecting to the form?

21 Mr. Fishman. I don't want to object to the form. I was
22 going to ask if you could clarify what you mean, because I
23 don't understand it.

24 The Witness. I don't understand it, either.

25 Mr. Clark. Fine.

1 BY MR. CLARK:

2 Q Would you agree that a matter could be presented to
3 the Department -- please take a look at this -- and the
4 Department could review the matter without knowing the
5 position or opinion of the person asking for the review?

6 Mr. Fishman. What sort of -- from what sort of matter
7 are you discussing?

8 Mr. Clark. All right, I will be specific.

9 BY MR. CLARK:

10 Q If you look at page 6678, on the bottom, the last
11 paragraph: In preparing this memorandum the following
12 documents were reviewed: One, the referral; two, a letter
13 dated September 1, 1992 from Richard Iorio, which was the
14 transmittal letter; three, a letter dated October 16, 1992
15 from Charles Banks to Don Pettus; and, four, a letter dated
16 January 27, 1993 from Charles Banks to Donna Hennenan. Now,
17 it was not necessary to present to Mark MacDougall, the person
18 who prepared this review, Mr. Banks' two pieces of
19 correspondence in order for him to review the criminal
20 referral; is that correct?

21 A Not necessary, but I think quite appropriate. The
22 reviewer has all the available information.

23 Q Well, what information do you think was in
24 Mr. Banks' letters that was not in the criminal referral?

25 A Well, one, his view or his comment that he had

1 previously unsuccessfully prosecuted McDougal, the present
2 lack of affluence on the part of McDougal, all of which go, as
3 we discussed previously, to -- go into the mix of determining
4 whether it is a prosecutable matter or should be prosecuted.

5 Q So this goes back to our discussion earlier about
6 prosecutorial discretion?

7 A Uh-huh.

8 Q Is that correct? So that Mr. --

9 A But my basic point is you are giving a lawyer
10 something to review, you give him everything you have. You
11 don't hold things back from someone you are asking to review.

12 Q Well, isn't it possible that certain information
13 might be tainted or might be prejudiced by reasons that have
14 nothing to do with the merits?

15 A It is possible, but, you know, you give a lawyer
16 something to do, you give him all the information, he makes a
17 determination, based upon all of the available information.

18 Q Is the fact that a person has been acquitted of a
19 crime a preclusion on prosecution from further crimes?

20 A No, it isn't, but in this context, I think you have
21 to take this in context. My understanding of Banks' position
22 is that he has difficulty convicting this particular
23 individual in Little Rock, that was my understanding of his
24 basis for throwing that in.

25 Q Do you have any recollection of voicing the opinion

1 that this memorandum prepared by Mark MacDougall should
2 support Mr. Banks' position?

3 Mr. Fishman. I am sorry, which position? --

4 Mr. Clark. That the case not be prosecuted.

5 The Witness. Okay, give me that again because I am not
6 sure I understand the question.

7 Mr. Clark. Certainly.

8 BY MR. CLARK:

9 Q Do you have any recollection in the period of
10 February, March 1993, of voicing an opinion to anyone inside
11 the Department that this memorandum should support Mr. Banks'
12 position that the case should not be prosecuted?

13 A No. It would be entirely inappropriate for me to
14 suggest to a lawyer how he should make an analysis.

15 Q Getting back, the fact that Mr. McDougal might not
16 presently have any funds, that fact in and of itself does not
17 preclude prosecution by the Department?

18 A Does not preclude, that is right.

19 Q Certainly if an individual had squandered the
20 substantial proceeds of a financial crime, that would not be a
21 reason not to prosecute that person in and of itself?

22 A No, but it is a matter you would take into
23 consideration because there is a question of civil recovery
24 and fines that might be assessed, so it is a matter you would
25 take into consideration and give some weight.

1 Q But it is true, is it not, that a criminal
2 prosecution should not be advanced for the primary purpose of
3 affecting a civil recovery; is that correct?

4 A That is correct.

5 Q And certainly there were instances, particularly in
6 the financial institution fraud area where people were
7 prosecuted despite the fact that they had squandered the
8 proceeds of their crimes?

9 A I am sure that is true, yes.

10 Q Are you familiar with Don Dixon?

11 A I am generally familiar with Dixon, that is all. I
12 couldn't tell you the details of the prosecution or
13 prosecutions, there may have been more than one.

14 Q Okay.

15 Again, then, these are matters that go to discretion, not
16 to the issue whether there is a prima facie case based on the
17 facts, divorced from the person's circumstances?

18 A They are matters you could take or maybe should take
19 into consideration in making the prosecutive judgment after
20 you have concluded that there is a prima facie case.

21 Q Did any person at anytime in 1993 inform you that
22 Mr. Mark MacDougall's memo was in error, either as to certain
23 facts or as to certain law?

24 A I have no recollection of that.

25 Q Mr. Keeney, I am sure you are familiar with the

1 principles of Federal prosecution?

2 A I am.

3 Q Is it fair to say that one of them is in the
4 instance where a matter is declined that consideration should
5 be given to whether other prosecuting authorities might handle
6 the matter?

7 A Uh-huh.

8 Q I am sorry, you have to be verbal.

9 A The answer is yes.

10 Q Okay.

11 Your memo or the memo in your name that you didn't sign,
12 006676, while it says that the Department of Justice wouldn't
13 question a decision by the U.S. Attorney to decline further
14 substantive action, it doesn't say anything about possibly
15 referring the matter to Arkansas State authorities, does it?

16 A It does not.

17 Q Was there any discussion of whether that should be
18 included in your memo, the memo under your name?

19 A I don't have any recollection that it was discussed.

20 Q If you were aware that Mr. Mark MacDougall
21 specifically said in his memo that some of the conduct
22 described might violate State law and yet the memo in your
23 name made no mention of the possible referral to State
24 authorities, would that concern you?

25 A No, because in the underlying memorandum he makes

1 reference to the fact that there should be a referral. If
2 that was sent out, and I think the memorandum says, if
3 appropriate, send it to the United States Attorney, when he
4 reviews that, that should be a determination that he would
5 make as to whether or not it should be referred to local
6 authorities.

7 Mr. Sharman. Just for the record, while there is a
8 pause, the MacDougall who is the author of the memorandum is
9 M-a-c-D-o-u-g-a-l-l.

10 Mr. Fishman. The point Mr. Sharman is trying to make is
11 he is no relation to the McDougals.

12 Mr. Sharman. That is a conclusion.

13 Mr. Fishman. I think Mr. MacDougall, who is no longer
14 employed by the Department, nevertheless would have
15 appreciated your having pointed that out for the record.

16 Mr. Sharman. M-c-D-o-u-g-a-l, Mr. McDougal of Arkansas.

17 BY MR. CLARK:

18 Q A couple days after the date of that memorandum on
19 March 23 of 1993, President Clinton asked for the resignations
20 of all the United States Attorneys. Do you remember that
21 event?

22 A I remember he asked for the resignations, yes. I
23 don't remember the date.

24 Q Okay.

25 In your tenure in the Department, which was continuous

1 from 1951 until the present, correct?

2 A (Witness nods head affirmatively).

3 Q In your tenure had that ever occurred before or
4 something similar to that?

5 A Well, for years the expectation was that when there
6 was a change of administration the United States Attorneys
7 would submit their resignation. I don't recall any directive
8 from the President that they all submit their resignations
9 immediately.

10 Q So that when it occurred on this occasion, this was,
11 to your knowledge, an unprecedented event?

12 Mr. Fishman. Can I object to the scope. I mean, it
13 doesn't have anything to do with this investigation.

14 Mr. Clark. A relevance objection is noted.

15 Are you going to direct him not to answer?

16 Mr. Fishman. No, I am just -- I am inquiring of the
17 attorney representing the committee, what the relevance of the
18 question is since the U.S. Attorney for the Eastern District
19 of Arkansas had already resigned.

20 Mr. Clark. You have assumed a number of facts in there,
21 that is why, as far as its relevance to our investigation.

22 I am going to permit the question to stand.

23 Mr. Fishman. I am just asking if you are declining to
24 tell me what the relevance of the question is. I am just
25 asking what the relevance is.

1 Mr. Sharman. Actually, I don't mind saying the
2 relevance. The relevance, there had been allegations that the
3 call for the resignation was improperly motivated or designed
4 to achieve improper ends, and therefore we are trying to
5 factually flesh out facts that may go to demonstrating or not
6 demonstrating the validity of that allegation.

7 Mr. Fishman. Okay, I understand that.

8 And as Mr. Clark and I discussed it in an earlier
9 deposition, I believe that the U.S. Attorney in the Eastern
10 District of Arkansas had already left. So that is why I am
11 asking whether it is relevant. I am not attempting not to
12 have the question answered. I am just --

13 Mr. Clark. I understand and thank you.

14 Mr. Fishman. Okay.

15 BY MR. CLARK:

16 Q The question, Mr. Keeney, ~~was based on your prior~~
17 answer, then, this directive in late March of 1993 was, to
18 your knowledge, unprecedented?

19 A It was unprecedented while I was in the Department,
20 yes.

21 Q Okay.

22 Do you recall if you discussed it with anyone
23 contemporaneously, either immediately before it went out or --

24 A You mean, officially or what?

25 Q Anyone within the Department.

1 A As a matter of gossip or as a matter of recommending
2 policy? I don't understand your question.

3 Mr. Sharman. We will traffic in gossip also, but --

4 BY MR. CLARK:

5 Q First, in your official capacity.

6 A No.

7 Q Did you happen to gossip with Mr. Hubbell about it?

8 A No.

9 Q Did you happen to voice an opinion that you
10 thought -- well, did you happen to voice an opinion to Jerry
11 MacDowell or Mr. Urgenson about it?

12 A Just as a general proposition?

13 Q Yes.

14 A I might have. I don't know.

15 Q You can't recall expressing a particular --

16 A I cannot, but I might have.

17 Q Do you have an opinion on the matter?

18 A Do you want me to answer it?

19 Mr. Fishman. I am certainly not going to direct
20 Mr. Keeney not to answer the question. It is entirely up to
21 him.

22 Again, since my understanding is that the scope of the
23 investigation is the handling of the Whitewater matter, to the
24 extent this has something to do with that, I certainly have no
25 objection. But I again ask Mr. Clark and Mr. Sharman, is

1 there some connection that you can articulate?

2 I am willing to proceed, if you represent to me in good
3 faith that there is a connection between what the committee is
4 investigating with regard to the Department's handling of the
5 referral, then that makes sense, but based on the documents
6 and the witnesses who have testified so far, I don't see that
7 connection, and ask whether you can enlighten Mr. Keeney
8 before you ask him to answer the question.

9 Mr. Sharman. Well, as we have already said, we believe
10 that there may be a connection inasmuch as certain allegations
11 have been made whether or not there was in fact a connection
12 presumably is one of the goals of discovery, and so it is
13 Mr. Clark's call. But I would think Mr. Keeney, if he has an
14 opinion he is willing to share, we would appreciate it. If he
15 has no opinion, then he has no opinion.

16 Mr. Clark. I would prefer to let the question stand.

17 The Witness. I have an opinion. But I think it is
18 totally irrelevant to your inquiry because the fact is, as
19 Paul has pointed out, it had no impact on Arkansas because
20 there was a vacancy at the time.

21 BY MR. CLARK:

22 Q If you wouldn't mind, could you just express your
23 opinion.

24 A I will give you my opinion. I thought that it would
25 have been better to follow the usual practice, which, in fact,

1 they did follow, of letting the United States Attorneys leave
2 at an appropriate time, which took into consideration their
3 official responsibilities and their personal wishes.

4 Q You said in your answer, which they did follow?

5 A To a large extent, they did. The United States
6 Attorneys did not leave immediately. Some of them strung out,
7 as a matter of fact, I think one of them is still in office,
8 but there was not a mass exodus is what I am trying to say.

9 Q By "they," you are referring to the Clinton Justice
10 Department people or the White House? Who are you referring
11 to by that?

12 A Referring to the United States Attorneys. I thought
13 that is what we were talking about.

14 Q Yes, we are, but I thought your answer was they
15 didn't require them all to leave at the same time.

16 A They didn't, that is what I am saying. As a matter
17 of fact, they didn't leave, despite that directive, all United
18 States Attorneys did not pack up and leave immediately.

19 Q Okay.

20 And that was acceded to?

21 A Pardon?

22 Q That was acceded to?

23 A Yes.

24 Q There was no follow-up to the directive?

25 A No follow-up that I am aware of, and I am aware of

1 the fact that many of the United States Attorneys stayed on
2 for a considerable period of time thereafter.

3 Q In a New York Times interview, Bernie Nussbaum said
4 that early on in the administration he had a fair amount of
5 interaction with the Department because the White House
6 Counsel's Office was in place ahead of the political
7 appointees in the Department, or something like that, I am
8 summarizing. In the period of February and March 1993, did
9 you have any personal interaction with Mr. Nussbaum?

10 A No.

11 Q Did you have any personal interaction with anybody
12 from the White House staff in that period other than
13 Mr. Nussbaum?

14 A Not to my knowledge. Not to my recollection.

15 Q We are going to get into a new area that is probably
16 going to take some time. I don't know what you want to do as
17 far as the timing.

18 Mr. Fishman. I think the answer is having discussed this
19 briefly with Mr. Keeney earlier --

20 Mr. Sharman. Go off the record.

21 [Whereupon, at 12:50 p.m., the deposition recessed to
22 resume at 1:35 p.m., the same day.]
23
24
25

1 RPTS BLAZEJEWSKI

2 DCMN QUINTERO

3 [1:35 p.m.]

4 BY MR. CLARK:

5 Q Mr. Keeney, before we move on, I just want to go
6 back very briefly to the memo in March of 1993 that
7 Mr. Urgenson initialed in your name. You did not give --
8 withdrawn.

9 Did you give instructions to Jerry MacDowell or Mark
10 MacDougall or Larry Urgenson as to how that memorandum should
11 be prepared in any way?

12 A To what, form or substance?

13 Q Substance.

14 A No.

15 Q Did you impose any sort of deadline on it?

16 A Not that I can recall.

17 Q Is it your testimony that you don't have a specific
18 recollection of actually reading the memorandum which
19 concerned the then President of the United States after it was
20 prepared?

21 Mr. Fishman. At what point?

22 Mr. Clark. And before your March 19th or the March 19th
23 memo.

24 The Witness. Excuse me.

25 What are we referring to now, what was transmitted with

1 the March 19th memorandum?

2 Mr. Clark. That is correct, the five-page memorandum
3 from Mr. MacDougall.

4 The Witness. I don't have any recollection of having
5 read it prior to its being sent out.

6 BY MR. CLARK:

7 Q Now, I want to show you now a single page, it is
8 marked A 00317. Do you recognize that document?

9 A Yes.

10 Q It is a handwritten redacted page. Do you know
11 whose handwriting that is?

12 A It is mine.

13 Q Okay.

14 These apparently reflect notes of either personal or
15 phone conversations; is that accurate?

16 A It could be either way, yes.

17 Q Okay.

18 And this particular page has the name Web Hubbell twice
19 on it, both times underlined, and a date of April 7th of
20 1993. What I would ask you to do is if you could just read
21 the information that appears on the sheet.

22 A Okay. Racehorse Haynes, plea Texas OPR.

23 Q Let me stop you there.

24 Mr. Haynes is a defense lawyer?

25 A A defense lawyer from Texas.

1 Q Okay.

2 Then underneath that.

3 A Plea Texas.

4 Q I mean after OPR, I am sorry.

5 A FF health care.

6 Q Next to health care, what appears to the right of
7 that?

8 A FBI.

9 The next one is MLK, which I assume is Martin Luther
10 King, and conspiracy question mark, and then Mr. Hubbell's
11 name appears a second time, it is underlined.

12 Q And underneath that can you just read what appears
13 there?

14 A "Keep him up to date on any developments."

15 Q And to the left of that there is an "X" and a circle
16 and two letters to the left, ~~immediate left of the word~~
17 "keep"?

18 A Yes, the "X" and the circle means that I followed
19 through on something, that I have something to do, and the
20 "OK" means that I have done it.

21 Q Okay.

22 Let me just ask you for one second, the FF, what does
23 that stand for?

24 A Financial fraud, I assume, but I really don't know.
25 I have no recollection what that was. My guess is that these

1 are separate transactions and I just put it down.

2 Q In the course of 1993, you had meetings at various
3 times with Mr. Hubbell about the Health Care Task Force. Is
4 that accurate?

5 A I don't recall.

6 Q Okay.

7 A See, I was kind of out of the loop on the health
8 care. That was handled mostly by the people who supervise
9 fraud, so I could have had some contact with them but I don't
10 recall any.

11 Q Okay.

12 Would it have been your practice to have included the
13 names of other people if there had been other persons
14 attending any conversation that you had with Mr. Hubbell?

15 A Normally, yes.

16 Q Okay.

17 So the absence of any other person's initials there is
18 consistent with -- or is probably symbolic of the fact that it
19 was a conversation between just yourself and Mr. Hubbell?

20 A Probably, yes.

21 Q I would like to focus your attention now a little
22 bit later on on specifically September of 1993. You are
23 familiar with the name David Hale?

24 A Yes.

25 Q When did you first hear about Mr. Hale?

1 A Either August or September of 1993.

2 Q And do you remember who you first heard his name
3 from?

4 A Well, I don't know whether I heard it from one of
5 the assistants in Little Rock or indirectly from Gerth, a
6 reporter from the New York Times. I just don't recall which.

7 Q What do you recall learning about Mr. Hale at the
8 very beginning?

9 Mr. Fishman. Before Mr. Keeney answers the question, I
10 know there have been discussions between your office and the
11 Office of Independent Counsel on the Hale matter, I also know
12 we have requested not to provide any documents dealing with
13 Mr. Hale.

14 Before Mr. Keeney answers questions, it would be helpful
15 I think to him, for you to put on the record for his benefit
16 your understanding of what the scope of your agreement is with
17 the Independent Counsel so he knows how far he should go in
18 answering questions. In other words, you have an
19 understanding, it is my understanding that you have agreed
20 with the Independent Counsel, at least in principle, to avoid
21 certain areas in your questioning.

22 In order to make sure that Mr. Keeney does not
23 inadvertently stray over that line in his answers, since he
24 has not been privy to or part of those conversations, I think
25 it would be fair to him and helpful to you and the Independent

1 Counsel for you to advise Mr. Keeney what your understanding
2 is of the appropriate answers and questions, so he can conform
3 to that the best he is able so as not to inadvertently
4 interfere in any way with what the Independent Counsel has for
5 us.

6 Mr. Sharman. I will be happy to try to respond to that.

7 Mr. Fishman is correct that we have had discussions with
8 the Office of Independent Counsel with regard to concerns that
9 they have expressed about document and deposition discovery
10 which in their view may go to the substance of a number of
11 investigations, including the investigation involving David
12 Hale. We have attempted to heed the wishes of the Independent
13 Counsel in this regard, as in all others, to the extent
14 permissible to us in fulfilling our institutional and
15 constitutional oversight function.

16 We have not, however, agreed ~~in advance to not~~ ask any
17 particular question nor have we agreed that any particular
18 subject matter by itself is inappropriate for questioning.

19 That said, we have attempted -- and I assume Ms. Garcia
20 will also be sensitive to the concerns that have been
21 expressed about reviewing the substance of investigations,
22 especially with regard to ultimate determinations of merit or
23 demerit assessment of witnesses credibility and prosecutorial
24 decision making.

25 With that said, I am afraid we are not going to be able

1 to provide either Mr. Fishman or the witness with a guide as
2 to whether or not a particular question should be answered or
3 if it should be answered, the extent of the answer. In this
4 circumstance it is our view that all of us have to take into
5 consideration the statements that have been made by the
6 Independent Counsel in posing questions and posing objections
7 to them. That assumes, however, that if a question is asked,
8 an answer is expected. But at least on our part we will
9 always make an effort to clarify at the outset that a question
10 does not encompass X, Y, and Z, and if that is confusing to
11 the witness or is unclear, we will try to clarify that, but we
12 are not going to be able to provide some sort of guideline
13 that one can check off whether that is an appropriate question
14 or not.

15 Mr. Fishman. That is fine. I just wanted to make sure
16 that everyone was sensitive to that.

17 I do not believe that it is appropriate for the
18 Department, I mean, I don't want to say it unequivocally, but
19 it is not the Department of Justice's position to object on
20 behalf of the Independent Counsel. That is a matter between
21 the Office of the Independent Counsel and the committee.

22 Mr. Sharman. We understand that.

23 Mr. Fishman. My concern is that because, as you know,
24 the Office of Independent Counsel has asked us not to produce
25 documents dealing with Mr. Hale. Although Mr. Keeney has had

1 an opportunity to review all of the documents provided to the
2 committee that he had seen beforehand, he has not reviewed the
3 universe of David Hale documents in preparation for his
4 deposition today. And so to that extent I want the record to
5 be clear that unlike the documents that Mr. Clark has shown
6 him so far today, which were provided to the committee, and
7 the Independent Counsel knows that, there may be David
8 Hale-related documents that Mr. Keeney saw contemporaneously
9 in 1993 that would illuminate his answers or make them more or
10 less complete or refresh his recollection. But because the
11 Independent Counsel has asked us to not to produce them to the
12 committee and we have thus far acceded to that request with
13 the knowledge of the committee, Mr. Keeney has not reviewed
14 any of those documents, and I want that to be clear so as to
15 be fair to him and to the committee.

16 Mr. Sharman. Certainly. That is no problem. We will
17 assume that simply because Mr. Keeney provides an answer based
18 or related to a document that has not been provided, that does
19 not necessarily indicate a difficulty with the document
20 production.

21 Mr. Fishman. I note in that regard the committee does
22 have an outstanding request for the correspondence between the
23 U.S. Attorney's Office in Little Rock and counsel for
24 Mr. Hale, and we are engaged in discussions with the
25 Independent Counsel about whether that production would be

1 acceptable at this point to the Independent Counsel and,
2 obviously, as soon as we have an answer from them, we will let
3 you know. I hope to have that by tomorrow.

4 Mr. Clark. The request is actually broader than that,
5 just to be clear.

6 Mr. Fishman. No, I know --

7 Mr. Clark. We don't need the --

8 Mr. Fishman. There is no confusion about that. I think
9 the committee is sensitive to the difficult position that we
10 are in and the Independent Counsel's office is in with
11 attempting to comply as much as possible with the committee's
12 request without having the Department be in a position of
13 unnecessarily interfering with the Independent Counsel's
14 investigation by providing documents.

15 We have thus far had a relatively productive, in fact a
16 completely productive dialogue with the Office of Independent
17 Counsel in this regard, and I expect that that will continue
18 expeditiously with respect to those remaining requests that
19 are outstanding from the committee.

20 Mr. Sharman. With that colloquy, I would ask Mr. Clark
21 to tee up the question again, if he remembers it.

22 BY MR. CLARK:

23 Q Mr. Keeney, with regard to David Hale in regard to
24 this period in either August or September, do you recall
25 whether there was any specific factual information that you

1 learned of connected with Mr. Hale?

2 A Yes. From reading the newspapers, and I think from
3 talking to the assistants, I learned that Hale's counsel
4 claimed that Hale had information with respect to
5 then-Governor Clinton, and Clinton and I guess McDougal
6 intimidating, or attempting to intimidate Hale to provide some
7 funds.

8 Q Okay.

9 When you say information about then-Governor Clinton, you
10 are not referring to 1993, you are referring to some prior
11 period of time?

12 A Right.

13 Q And --

14 A When Hale alleged the incident took place.

15 Q Okay.

16 Upon acquiring this information, did you share it with
17 anyone in the Department?

18 A I probably did.

19 Q Do you have a recollection of anyone in particular?

20 A No, but I would have -- let's see, we are dealing
21 now in August or September 1993. I would have advised
22 somebody in the chain of command.

23 Q Can you define who you would include in that chain
24 of command?

25 A Somebody in the Deputy Attorney General's Office or

1 somebody in the Attorney General's Office, since this was a
2 period when I was acting, so I was a top official in the
3 Criminal Division.

4 Q Okay.

5 And at that point, who was in the position of Deputy
6 Attorney General?

7 A Phil Heymann.

8 Q And Ms. Reno was Attorney General at that point?

9 A Yes.

10 Q And Phil Heymann, you knew from his prior stint at
11 the Department; is that correct?

12 A Yes, that is correct.

13 Q Back in the 1970s, I think?

14 A Yes.

15 Q And, in fact, back in the 1970s, you were involved
16 in the Department's first dealings with the Independent
17 Counsel law; isn't that right?

18 A Yes.

19 Q And Mr. Heymann was involved in that, too?

20 A Yes.

21 Q Okay.

22 So at that point back in the late 1970s, I take it that
23 you had to become familiar with the provisions of the
24 Independent Counsel law?

25 A Uh-huh.

1 Q Getting back now to the summer of 1993. Do you
2 recall if you took any action upon learning that Mr. Hale was
3 making these, or his lawyer was saying he would make these
4 claims?

5 A The only action I took was giving advice to the
6 assistants, and I think to Paula Casey when she came on board.

7 Q Okay.

8 Do you recall if you gave this advice in consultation
9 with other people within the Department?

10 A I don't think so. I think I did it on my own.

11 Q Do you recall the names of the people that you were
12 dealing with other than Ms. Casey in the U.S. Attorney's
13 Office?

14 A Yes, one was Johnson, and I think the other was
15 Jackson. I talked to one or both of them on several
16 occasions.

17 Q Do you recall there coming a time when you had a
18 meeting in your office with Irv Nathan and Jerry MacDowell and
19 some other people to discuss this?

20 A What is "this"?

21 Q The issue of the Hale allegations.

22 A I don't recall any discussion of the Hale
23 allegations as such because they were allegations. The
24 discussions that I had with the assistants related to their
25 dealing with the lawyer for Hale.

1 Hale wanted, as I understand it, either a pass, no
2 prosecution, or a misdemeanor plea in return for cooperating
3 and giving the detail of his alleged relationship with
4 then-Governor Clinton. They were taking the position that
5 they wanted a proffer, and I encouraged them to adhere to that
6 position, not to make any sort of a deal unless they had some
7 sort of a proffer as to what information he could provide.

8 At some point, they came back and said, I think this is
9 when Paula Casey was on board, that counsel didn't trust the
10 Little Rock office because of their alleged relationship with
11 the Clintons, and that is why he wouldn't make a proffer. So
12 I suggested, then, that the proffer be made directly to
13 Washington, to the Criminal Division, so that is the matter,
14 if there was a discussion, that is what it would be about.

15 Q Can you approximate how much time there was in this
16 interval between when you first discussed it with the
17 assistants and when you suggested that a proffer be made to
18 main Justice?

19 A I think I suggested that when it was first
20 arranged -- no, I am sorry, the proffer to main Justice, that
21 was only in response to counsel's statement that he didn't
22 trust the Little Rock office to make a proffer to them. Then
23 I suggested it come to Washington, but that was not in the
24 first conversation.

25 What was in the first conversation was I totally agreed

1 with them, that they shouldn't make any sort of a deal with
2 him without getting some sort of a proffer that could be
3 evaluated.

4 Q Approximately, how many conversations did you have
5 in this interval?

6 A Maybe three or four.

7 Q Did you ever communicate personally with Mr. Hale's
8 lawyer in that period?

9 A No.

10 Q Did you ever offer to do that?

11 A Did I ever offer, what, to talk to him directly?

12 Q Yes.

13 A I don't recall now, but I wouldn't rule that out.
14 If he wanted to come to Washington, that was the suggestion I
15 was making, if he wanted to come to Washington and make a
16 lawyer proffer to us, we would be amenable to that.

17 Q And just so the record is clear, that is not an
18 unusual occurrence within the Department, is it?

19 Mr. Fishman. I am sorry, what is not, the proffer?

20 Mr. Clark. An attorney coming to main Justice to make a
21 proffer in regard to a matter that is being investigated in a
22 U.S. Attorney's office.

23 The Witness. I would say it is unusual.

24 BY MR. CLARK:

25 Q It is?

1 A Yes. They come to Justice for a variety of reasons,
2 but normally the proffer would be made to the prosecution
3 team, and as I indicated, he was stating a reason why, giving
4 a reason why he would not give it locally, so we were
5 suggesting that he could make it in Washington.

6 Q Okay.

7 Now, to get back to the question I did ask a bit ago, do
8 you recall having a meeting in your office with Irv Nathan and
9 Jerry MacDowell and Joe Gangloff to talk about the matter of
10 Mr. Hale's accusations?

11 A I don't recall it. It is the type of thing that
12 would probably have happened.

1 RPTS MCCALLEY

2 DCMN GALLACHER

3 [2:05 p.m.]

4 Q Now, we have two documents that you have,
5 Mr. Keeney, the first is a single page, 004503.

6 A Can you read it first?

7 Q Which portion are you referring to?

8 A Well, here, the --

9 Q Okay. First of all, can you identify the
10 handwriting that appears on that page?

11 A It's not mine. I don't know whose it is. Paula
12 Casey should recuse from Clinton allegation.

13 Q At the top right-hand -- we did ask for a better
14 copy that wouldn't have been cut off but we are informed that
15 this is the best copy we can get. It appears to be 9-20-93,
16 9:00 a.m., JCK's office. Looks like the bottom portion of
17 JCK, IBN, Joe, G-A-N-G was cut off and then GMCD. That would
18 be yourself, Irving Nathan, Joe Gangloff and Jerry MacDowell.

19 A Yeah.

20 Q Does this refresh your recollection that you did
21 have a meeting with those gentlemen?

22 A No, it doesn't.

23 Q Did you have any dealings with Irv Nathan in
24 connection with Mr. Hale and the allegations he was making?

25 A Well, I had dealings with him with respect to

1 recusal of Paula Casey because the Hale allegations that led
2 into, one, his mistrust of Paula Casey, which led us into
3 the -- mainly the position of concluding that she should
4 recuse herself. And I did discuss -- I think I discussed that
5 with Nathan. I may have discussed it with Heymann. I may
6 have discussed it with Margolis. I knew the attitude of the
7 fourth floor, the Deputy Attorney General's office, with
8 respect to recusal. They agreed with me that she should
9 recuse herself.

10 Q Okay. At the time, Mr. Nathan was working in the
11 Deputy Attorney General's office?

12 A Well, he had to be or otherwise I wouldn't have had
13 any dealings with him. He was in private practice and he came
14 into the Department, I wouldn't have been dealing with him on
15 this subject if he were not in the Department.

16 Q I mean, as opposed to another component of the
17 Department.

18 A Well, his only position during that time period
19 was -- he came from private practice and went to the deputy's
20 office.

21 Q And Joe Gangloff in 1993, September, where was --
22 where was he working in the Department?

23 A He was the deputy section chief in the public
24 integrity section, I believe might have been acting section
25 chief at that time.

1 Q Now, the other document, 007736 through the last
2 page, I'm not saying they are consecutive, it's a number of
3 pages. This is how it was produced to us. Last page is
4 007767.

5 A Okay.

6 Mr. Fishman. They are consecutively numbered, I think.

7 Mr. Clark. Yes. Kind of curious since there is a
8 newspaper article stuck into what otherwise appears to be
9 somebody's bound notebook, but that could happen.

10 BY MR. CLARK:

11 Q If you turn to page 007738. About a third of the
12 way down, there is an arrow and next to it it has, get U.S.
13 Attorney office report from Carver, it appears. And then the
14 last word I am not exactly sure.

15 Mr. Fishman. Where are you reading from? From --

16 The Witness. Doesn't look like Carver to me. I don't
17 know what that is.

18 BY MR. CLARK:

19 Q Did you at any point connect Mr. Hale with the
20 referral from the RTC that you had dealt with in February and
21 March of 1993?

22 A What do you mean by connect them with Hale?

23 Q Well, did the -- the allegations that Mr. Hale was
24 making concerning Mr. Clinton and Mr. McDougal --

25 A Right.

1 Q Did that recall to your mind the criminal referral
2 from the RTC earlier ~~that year~~ that discussed Madison Guaranty
3 Savings and Loan, Mr. McDougal and Mr. Clinton?

4 A Yeah, I mean Uh-huh.

5 Q Okay.

6 Mr. Fishman. Wait a minute. I mean, if you are
7 interested I can hazard -- instead of being Carver, I think
8 you misread it. But I don't want to testify.

9 Mr. Clark. What do you think it said?

10 Mr. Fishman. I believe it says career prosecutor.

11 The Witness. Yeah.

12 Mr. Fishman. So we don't leave it to a guessing game, I
13 am not attempting to testify but I also don't want to leave
14 the record unclear as to --

15 Mr. Clark. Okay.

16 The Witness. That would be for them.

17 BY MR. CLARK:

18 Q Well, regardless, do you have a recollection that
19 you asked Allen Carver to get you a copy of the memo from
20 earlier in 1993, in September of 1993?

21 A That's the original Madison Guaranty referral?

22 Q Yeah.

23 A I don't have any recollection but it makes sense.

24 Q If you turn to page 007745.

25 A Okay.

1 Q If you look at the very right, lower right-hand
2 side. It appears to be, Johnson gives source Hale/attorney,
3 and then there is an arrow DOJ. Do you know if there was any
4 discussion on the -- at this meeting or at any time in
5 September of discussing the source of the Department of
6 Justice's information about Mr. Hale's allegations?

7 A Yeah. There was a discussion because Irv Nathan
8 came to me and told me that he had information from a source
9 whom he promised privacy to with respect to this -- to the
10 Hale allegations.

11 Q Now, when Mr. Nathan came to you, was that after you
12 heard about Mr. Hale's allegations from someone else or is it
13 possible that he was your first source?

14 A It's possible he was the first source but the time
15 sequence in there is a limited one. I just don't know at this
16 point. He might have been the first source.

17 Q Did he keep that confidential from you, the source
18 of his information?

19 A He did for a time, yeah.

20 Q He eventually --

21 A He said he made a commitment of confidentiality and
22 he couldn't disclose the source at that time.

23 Q Did he eventually disclose the source to you?

24 A Yeah.

25 Q Who was Mr. Nathan's source?

1 A The reporter.

2 Q Mr. Gerth?

3 A Mr. Gerth.

4 Q You should have now, Mr. Keeney, A 000265, single
5 page.

6 A Okay, I have it.

7 Q This appears to be the telephone log for Monday,
8 September 20th, 1993, for you, and you will notice at the very
9 top is the name Web Hubbell.

10 A Yes.

11 Q And to the left of it is named there four numbers
12 that appear to be times: 9:10, 12:20, 1:50, and 2:00. Is
13 that correct?

14 A That's what it says.

15 Q Okay. Now, underneath that, underneath where it
16 says redacted, it has Paula Casey, AUSA. Then underneath
17 that, AUSA Fletcher Jackson and AUSA Michael Johnson and it
18 has to the left of those names 2:25 and 12:10.

19 Now, if you look back at the notebook on page 007745, you
20 will see that on the upper left-hand portion it has what
21 appears to be 12:00, JCK calls Paula Casey, out this WK, which
22 I interpret to be week, Fletcher not in. Then 12:14, JCK asks
23 for first AUSA Michael Johnson. Then underneath that there is
24 a fair amount of information concerning David Hale.

25 A I have it.

1 Q Okay. So it appears from the documents that you did
2 have a conversation with Michael Johnson at 12:14 p.m. on
3 September 20th, 1993, and it appears you got a fair amount of
4 information from him.

5 Now, going back to Mr. Hubbell's name, you will notice
6 that one of the entries is 12:20.

7 A Now, I don't understand the entries. If you do, I
8 would appreciate you explaining them to me. The in 1:50, in
9 9:10, out 2:00, out 12:20. There must be in the records --

10 Q If you look lower, 12:10 next to Paula Casey's name,
11 it is in the column marked out, which would indicate your
12 making that call.

13 A Oh, okay. I gotcha. Thank you for explaining my
14 own records.

15 Q Do you know what was so important that you had to
16 call Mr. Hubbell, apparently very shortly after you spoke to
17 Michael Johnson? .

18 A No. I do not.

19 Q I am going to show you now two pages, P00080 and
20 then the next page is not consecutively numbered, it is
21 P00087. These are two pages of what have been represented to
22 us to be Paula Casey's phone records or her calling card
23 records, I should be accurate. And you will see that on
24 September 20th, at 11:49 a.m. the third entry, there is a call
25 to Washington, D.C., 202-514-2621. That is your number;

1 right?

2 A It is.

3 Q So this first page, page P -- that would be central
4 time, I imagine, because it indicates that call is coming from
5 San Antonio, Texas. In fact, if you look at page 007747 of
6 Mr. Gangloff's notebook, you will see that there is a note,
7 Paula Casey at Federal practice seminar, San Antonio, Texas,
8 and it gives a number, 210-227-4392, which number does appear
9 with certain entries on page P000080.

10 Mr. Fishman. Is there a question?

11 Mr. Clark. Not just yet. You see all that, Mr. Keeney?

12 A Uh-huh.

13 Q So the two calls on Miss Casey's cellular telephone
14 records indicate that the call at 11:49 a.m.

15 Mr. Fishman. That is call number three?

16 Mr. Clark. Yes.

17 BY MR. CLARK:

18 Q That lasted approximately two minutes. And the call
19 at 1:07 p.m. central time, which is call number five, that
20 lasted another two minutes.

21 Do you recall speaking with Miss Casey personally --

22 A Oh, yeah.

23 Q On this?

24 A But I can't say that that's the conversation.

25 Q Well, do you know whether this was the first time

1 you had spoken to her?

2 A I don't remember. She came into the office when,
3 September 1993?

4 Q These calls preceded that meeting that I think you
5 are referring to.

6 A I talked to her. As a matter of fact, I talked to
7 her more than once. But whether -- it seems to me these calls
8 are too short to be the one, the extended -- my recollection
9 is the extended conversation with her with respect to
10 recusal. And I could be wrong but I don't think that these
11 would be the particular --

12 Q Over what period of time did you discuss recusal
13 with Miss Casey?

14 A I don't know. It was a short period of time. I
15 discussed it once extensively with her. I'm not sure whether
16 I discussed it again or not. I may have.

17 Q I mean, can you say whether you recall it being a
18 week or longer?

19 A I don't.

20 Q And how many times approximately do you think you
21 spoke to her about it?

22 A I spoke to her at least once. I may have spoke to
23 her more than once. I talked to one or both of the assistants
24 several times on the same AL issue, proffer issue. With Paula
25 Casey, I moved from there into the recusal issue.

1 Q Did she take a position on whether she was going to
2 recuse herself?

3 A She did.

4 Q What was Miss Casey's position?

5 A That she didn't have an actual conflict, she was a
6 fair person and she could handle this matter fairly.

7 Q And what was your reaction to that position?

8 A I said that may well be true and I don't question
9 that; the problem here is perception and there's a perception
10 you were appointed by President Clinton. You are from his
11 hometown. You are his hometown United States Attorney. And
12 the appearance of impropriety is there because the -- it will
13 be hard for many people to believe that you can impartially
14 pass on anything that has a relationship to -- to President
15 Clinton, and the Hale matter did since he was making a direct
16 allegation against then-Governor Clinton.

17 Q How did you learn of Miss Casey's ties to
18 Mr. Clinton beyond the fact that she --

19 A I don't know. I -- I subsequently did learn that
20 she had a variety and then I don't know exactly when. I don't
21 know whether I knew it at this time or not. But I
22 subsequently learned that she did have a lot of ties. He
23 taught her in law school. Her husband worked for him. She
24 was active in the campaign. She was close to both President
25 and Mrs. Clinton. She was close to both Governor Tucker

1 and -- present Governor Tucker and his wife. I learned all of
2 these things. When I learned them, I don't know. They just
3 fortified my view that she should step aside.

4 Q And did the assistants in her office, did they have
5 an opinion on whether --

6 A On whether what?

7 Q Miss Casey should be recused.

8 A I don't recall discussing that with them as such. I
9 just don't recall.

10 Q They just gave you the facts about the case?

11 A Yeah, and the contacts with Randy Coleman, I think
12 his name is, a lawyer for Hale.

13 Q Now, going back to the telephone log for the 20th,
14 page A000265. It indicates that after your first call to the
15 U.S. Attorney's office in Little Rock, at 1:08 there was a
16 call involving Fred Verinder.

17 A Verinder.

18 Q Verinder. And then at 2:13. Now, it may have
19 been -- I am not sure whether that means the first one, one or
20 the other of you weren't there. But in any event, to the
21 right of that in the message column has, copy of communication
22 walked over to you today in afternoon re: Arkansas matter.

23 Do you know what that refers to?

24 A I'm almost speculating here but I would assume that
25 it related to the teletype communication from Little Rock

1 evaluating the RTC referral. But I have no specific
2 recollection of that.

3 Q This is 001982, and it is consecutively numbered
4 through 001996. And this is some documents that were faxed to
5 you by Allen Carver on September 20th, 1993, at 10:10 a.m.,
6 according to the fax report. And the accompanying documents
7 include the March 19th memorandum to Doug Frazier.

8 A Yes.

9 Q In your name, the February 9th of 1993 memo for Stu
10 Gerson concerning whether --

11 A Where is that?

12 Q That is at page 001987 and 1988. Okay. And then
13 behind that there is Chuck Banks' letter of January 27th,
14 1993. It is 001989 and 001999 -- let me do that over again,
15 001990. Then it appears two copies of Mr. Banks' October 16th
16 letter, 001991 through 001994.

17 Mr. Fishman. Both urgent reports from October of 1992.

18 BY MR. CLARK:

19 Q Do you recall asking Mr. Carver to send those
20 documents to you?

21 A Just vaguely.

22 Q Can you give me your vague recollection?

23 A I don't recall anything else about it. If you got
24 anything else that can refresh my recollection, I would be
25 glad to look at it.

1 Q Do you recall telling Mr. Carver particular
2 documents that ~~you wanted to see~~ as opposed to --

3 A I don't have any recollection of the conversation
4 with Carver in asking for the documents but obviously I did.
5 What is this date, September 20th?

6 Q Yes. In other words, this document was faxed to you
7 approximately an hour after the meeting, which is reflected
8 on 004503, was in progress.

9 A That makes sense to me but --

10 Q You have no specific recollection of not asking for
11 Mark MacDougall's analysis of the original referral, if you
12 spoke to Mr. Carver yourself.

13 Mr. Fishman. I am going to October to the form.

14 The Witness. No.

15 Mr. Fishman. There are two questions, whether he asked
16 for it, whether he asked Carver for it.

17 BY MR. CLARK:

18 Q You have no specific recollection of specifically
19 asking Mr. Carver to send you certain --

20 A Send the package, no.

21 Q Do you have a specific recollection of telling
22 anyone that you did not need Mark MacDougall's five-page
23 analysis of the RTC?

24 A I do not.

25 Q Going back to your telephone log, A0000265, now it

1 indicates that on September 20th you got calls after you spoke
2 to the U.S. Attorney's office in Little Rock from Mr. Verinder
3 and also Tom Kubic? It is spelled here with a "C," but I
4 believe it is K-U-B-I-C.

5 A It is "K."

6 Q Okay. Can you identify Mr. Kubic?

7 A Yeah. He's the supervisor in the FBI. I think he
8 was chief of the white collar crime group at that point or
9 corruption. I'm not sure which.

10 Q And do you remember speaking to both of those
11 gentlemen, if not on this particular date, at about this time
12 in connection with Mr. Hale?

13 A No.

14 Q Were they people who were involved in the matter, to
15 your knowledge?

16 A They would have been involved in the matter, yes.

17 Q Do you know how you learned of that information?

18 A What information?

19 Q That they were involved in the Hale matter, whether
20 it was from them or from some third party?

21 A Well, within normal flow of conversation and
22 contact, you know who the -- who in the Bureau is handling --
23 or at least sometimes you know who in the Bureau is handling
24 these matters.

25 Q Then this page 000265 indicates a call at 3:05, a

1 completed call with Web Hubbell.

2 A Yeah.

3 Q Did you mention your conversations with the people
4 in Little Rock with Mr. Hubbell?

5 A I'm sure I didn't. I'm sophisticated enough to know
6 that you don't discuss President Clinton with somebody who is
7 very close to the President.

8 Q Did there come a time, to your knowledge, when
9 Mr. Hubbell recused himself?

10 A Yes, there did.

11 Q How did you learn that he had recused himself?

12 A I think I got a copy of the recusal memo.

13 Q Now, was it your recollection that you had learned
14 prior to the memo that he had recused himself in regard to --

15 A I don't -- I don't remember whether I did or not.

16 Q Did you have any reaction upon receiving the memo
17 that he was recusing himself?

18 A No. I thought it was a normal thing to do.

19 Q This is, for the record, page A000330.

20 Mr. Fishman. I know this is your copy from our copy.
21 Mr. Keeney has expressed to me some difficulty in making out
22 the dates.

23 Mr. Clark. Okay.

24 The Witness. Do you have the dates?

25 Mr. Clark. I believe this is September 20th of 1993.

1 Mr. Fishman. Same date as the log?

2 Mr. Clark. And one of the reasons I draw that conclusion
3 is towards the bottom of the document there is the name
4 Fletcher and then to the right of it, hotel, 210-227-4392,
5 which is the same number that appeared in Mr. Gangloff's
6 notebook.

7 Mr. Fishman. Right.

8 Mr. Clark. From Miss Casey, which is also the same
9 number that appears on her telephone records.

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1 RPTS MCCALLEY

2 DCMN MAGMER

3 Mr. Fishman. Right. The only reason I ask is because
4 there appear to be two dates. There is one at the top, and
5 then there's another one maybe five lines down, and I'm
6 wondering whether that's the same day or two different dates.
7 I can't tell from this copy. And so while I agree with your
8 analysis that the time period's right, --

9 Mr. Clark. If you see also next to the hotel phone
10 number it has Federal practice.

11 Mr. Fishman. Right. But I don't know how long, how many
12 days it went on. As you know, Mr. Clark, having been in this
13 game yourself, these go on forever.

14 Mr. Clark. My knowledge is irrelevant.

15 Mr. Fishman. Not entirely. Some of these conferences go
16 on for several days. I'm just curious whether it's the --

17 BY MR. CLARK:

18 Q Let me ask you, Mr. Keeney, do you recognize the
19 handwriting on this piece of paper?

20 A It is my handwriting.

21 Q And, for example, a number of the names that appear
22 on this single sheet of paper also appear on the telephone
23 log, A000265, including Larry Potts, Michael Johnson, Web
24 Hubbell, ~~Fred Verinder~~. At the very top, under AUSA, Fletcher
25 Jackson, can you read what appears there?

1 A AUSA, Fletcher Jackson, Rose Law Firm, represented
2 Madison in paren -- ~~I guess that's~~ through Hubbell.

3 Q And then right underneath that?

4 A Nexus search.

5 Q Okay. Do you know what that refers to?

6 A I do not.

7 Q And then under Larry Potts, which is immediately
8 underneath --

9 A Yeah.

10 Q -- can you read what that says?

11 A David Johnson, NYT, which I assume is "New York
12 Times", call from.

13 Q Do you know who David Johnson is?

14 A From this I know him as a reporter for the Times.

15 Q Well, it doesn't say he is a reporter.

16 A Yeah. But that is my recollection of it, yes.

17 Q Did you have any conversations with David Johnson?

18 A I did not. I read this -- if that's what you
19 want -- as I had a conversation with Larry Potts, who told me
20 he got a call from David Johnson of The New York Times.

21 Q Okay. Then, underneath that, the next entry with
22 Mr. Potts' name -- by the way, does that indicate it is a
23 separate conversation?

24 A Yes.

25 Q There are two names.

1 A Well, Fred Verinder and Tom Kubic. Those are people
2 involved in this process.

3 Q Okay. So it's --

4 A He may or may not be connected with Arkansas, but it
5 could well be.

6 Q Then underneath Michael Johnson can you read?

7 A David Hale.

8 Q Then underneath the redacted portion where you have
9 the X and a circle.

10 A Copies of correspondence.

11 Q Now, underneath Fletcher and hotel, get Web Hubbell
12 again, and then you have something redacted. Then underneath
13 that, can you read that?

14 A Yep. Two or three nights in a row outside the AG's
15 office.

16 Q Does that have any relationship to the issue of
17 Paula Casey's recusal or Madison Guaranty Savings & Loan?

18 A Not at all. It is a reference to a personnel
19 matter.

20 Q At the time you were involved with Mr. Hubbell and
21 other people in space allocation in the Department, is that
22 right?

23 A I don't think I was ever involved in space
24 allocation.

25 Mr. Clark. Do you have this? Do you have the calendar?

1 Mr. Fishman. Yep. Page?

2 Mr. Clark. The Bates number is cut off. It appears to
3 be the third from last page.

4 Mr. Fishman. Do you have a date at the top?

5 Mr. Clark. September 16th.

6 Mr. Fishman. Yes.

7 The Witness. Oh, I'm sorry. Yeah. We did get a
8 briefing by -- I went there as a representative of the
9 Criminal Division. Other divisions were there. The subject
10 matter was the -- putting the Department of Justice in
11 different space. I believe -- well, I won't try and go beyond
12 that. It was a question of putting some of the divisions in
13 other space outside the main building. That's what it was,
14 yeah.

15 BY MR. CLARK:

16 Q Okay. And was your attendance at that conference on
17 September 16th merely as a stand-in for someone else?

18 A September 16th I was the Acting Assistant AG.

19 Q I thought you said that you really didn't have a lot
20 of involvement into this.

21 A Well, that's true. I misunderstood your question.
22 I thought you were talking about something entirely different,
23 Web Hubbell's space on the fifth floor which I had nothing to
24 do with.

25 Q Sure.

1 A I did attend a briefing by the Assistant Acting AG
2 for the administration with respect to the reshuffling of some
3 of the Department components outside the division. So I did
4 attend that.

5 Q And was that something that was a matter that was
6 ongoing for some period of time?

7 A Well, they had been doing studies on it.

8 Q Did you communicate with Mr. Hubbell over an
9 extended period of time on that issue?

10 A I'm not sure. Wait a minute. We are getting
11 confused. Where was that document? Room 5218. That's where
12 the meeting was held.

13 Q Yeah?

14 A It happened to be on my calendar. It's setting up a
15 meeting. I did attend such a meeting.

16 Q Okay. And my question was, subsequent to that
17 meeting, was there the need for you to continue to communicate
18 with Mr. Hubbell on the matters that were discussed in that
19 meeting?

20 A No. This was an informational meeting telling us
21 what was under consideration and what the possibilities were.
22 I did not communicate with Hubbell on that.

23 Q Now, one thing, Mr. Keeney. September 20th, as you
24 can tell from the calendar, was Monday; and this -- this
25 page, 004503, indicates that the meeting was at least in

1 progress at 9:00 in the morning. Do you have any recollection
2 how far in advance ~~that meeting~~ was called?

3 A No.

4 Q What's your -- what is your normal practice as far
5 as arriving in the morning? Do you have a set time that you
6 come to the office?

7 A I arrive usually between 9:00 and 9:20.

8 Q Going back to A000330, a page of your notes. Going
9 back to the center of the page, you read copies of
10 correspondence; and to the left of that you have the X and the
11 circle and what appears to be okay.

12 A Yeah. I put a note down there that I think that I
13 should get copies of some correspondence. That's the X. And
14 the okay means this I took care of it, asked that it be sent
15 to me.

16 Q Since it's underneath Michael Johnson's name, is it
17 fair to assume or does that refresh your recollection that you
18 were asking for copies of Randy Coleman's correspondence to
19 the U.S. Attorney's Office in Little Rock and their
20 correspondence back to Mr. Coleman?

21 A Yeah, if -- if we had it. Do we have it in the
22 file? I don't know. If I -- I think you are suggesting that
23 I made a request to Carver who was in the frauds section. I
24 don't know ~~that they had that correspondence~~ at the point.

25 Q No, what I'm wondering is, did you ask on this date,

1 during this call with Michael Johnson, to receive copies of
2 the correspondence?

3 A Oh, I may well have. I may well have. I don't
4 recall it specifically, but it makes sense that I would have
5 made that request.

6 Q Does that indicate that this was the first time that
7 you were communicating with Little Rock?

8 A Well, right up ahead, the top there, I was talking
9 to Fletcher Jackson.

10 Q But it's the same day.

11 A Same day, yeah. I don't know whether that's the
12 first day.

13 Mr. Clark. Tell you what, why don't we take a short break
14 so we can gather a series of documents that we are going to go
15 through next.

16 Mr. Fishman. How many areas of that was that of the
17 four? What have you got left?

18 Mr. Sharman. At least two.

19 Mr. Fishman. Which two?

20 Mr. Clark. I am probably going to go till 4 at least.

21 Mr. Fishman. What else have you got?

22 Mr. Clark. We haven't even discussed the actual
23 recusal. We'll take a couple minutes to get documents in
24 order.

25 [Recess.]

1 BY MR. CLARK:

2 Q Mr. Keeney, once you started talking to the U.S.
3 Attorney's Office in Little Rock, would you say that you were
4 assuming a fair amount of responsibility for the matter?

5 A For their relationship with Hale?

6 Q For the issue of whether Casey should be recused,
7 what was going to happen --

8 A Yeah.

9 Q -- with the Hale matter.

10 A I would say so, yes.

11 Q And were you reporting regularly to anyone within
12 the Department about your contacts with Little Rock?

13 A I assume I was reporting to either Dave Margolis or
14 Phil Heymann. I don't recall the specific conversation.

15 Q We haven't seen any memoranda that you wrote.

16 A It was probably oral.

17 Q Now, we have --

18 A It could very well have been oral. I -- I use the
19 telephone a lot for business.

20 Q Well, I'll summarize by saying that a number of
21 documents we have been provided indicate that, beginning on
22 September 20th, you began to communicate with people who were
23 involved with this matter on a daily basis. We did not see
24 documents that reflected that prior to September 20th.

25 Now, some of the documents -- and they are not your

1 documents, they are other people's -- indicate, in substance,
2 that you were taking a strong position that Miss Casey should
3 recuse herself.

4 For example, we have a document, FBI-00001922, which is
5 some handwritten notes dated September 22nd, 1993. Keeney
6 has -- and it's shorthand for I think has been calling.

7 Keeney wanted USA to recuse from this case. She said no.

8 Then FBI-00001924, somebody's notes. It appears from
9 conversation with Steve Irons, who was an FBI agent out in
10 Little Rock, DOJ still pressuring USA to recuse. She
11 disagreed.

12 But then at the bottom there's an indication USA leaning
13 toward recusing her whole office. Is it your recollection
14 that Miss Casey went back and forth on this issue or was she
15 fairly consistent?

16 A I don't remember. Let ~~me just say I did~~ come on
17 pretty strongly whether she should recuse. I felt strongly
18 about that subject. She, on the other hand, felt strongly
19 that there was no need for her to recuse and took it almost as
20 a personal affront that she didn't have sufficient integrity
21 to handle the matter. And so I don't recall her relenting.
22 Period. I don't recall any conversation with me where she was
23 relenting, but there may have been.

24 Q Okay. Now the documents also indicate -- and I can
25 summarize -- that, from her point of view, it was her

1 relationship with Governor Tucker that should be of primary
2 concern. Is that the way you remember her?

3 A At one point, she -- I guess I must have had several
4 conversations with her. At one point -- at some point -- and
5 I guess it must have been in conversation with her, because
6 she did emphasize the relationship with Tucker and his wife
7 which I -- I thought was a reason for recusal. But the
8 relationship with the Clintons was an even more important
9 reason for recusal.

10 Q Okay. And so it was your position that even if it
11 was just a matter involving Governor Tucker the facts still
12 warranted her recusing?

13 A I don't know. I never focused on that.

14 Q You were really focusing --

15 A I was focusing on the relationship with Clinton.
16 Clinton was the person who put her in office, and that was my
17 primary focus. It was his hometown, her hometown, and I
18 thought the appearance was pretty bad.

19 Q And what you were concerned about, if I might, would
20 it be that if Miss Casey made a decision that benefited
21 President Clinton people might say it was her relationship
22 with him that biased her.

23 A Exactly. Yes.

24 Q Okay.

25 A I really felt it was in her interest to put on it

1 differently to recuse herself -- her personal interest as well
2 as her professional interest.

3 Q Because she would avoid --

4 A She would avoid the criticism that would inevitably
5 flow if she were handling the matter.

6 Q I want to go back a little bit to the facts you got
7 from Allen Carver. Now, that concerned the disposition of the
8 first RTC referral. Did you speak to Miss Casey about whether
9 that matter had been disposed of by her office?

10 A I don't recall talking to her about the Madison
11 Guaranty. What I might have done is said -- I might have said
12 this -- and I am not positive -- in the course of the recusal
13 discussion: You should recuse with respect to David Hale; and
14 while the Clintons are on the periphery of Madison Guaranty,
15 you should be out of that, too. But I -- I'm not sure I ever
16 did.

17 Q Okay.

18 A But that's the way I felt. Whether I reflected that
19 in conversation, I don't know.

20 Q Do you have a specific recollection of discussing
21 the fact that her office had not yet indicated to the RTC
22 whether it was going to decline prosecution on the original
23 referral?

24 Mr. Fishman. If he knew.

25 Mr. Clark. If he knew.

1 Mr. Fishman. Right.

2 The Witness. I don't have any recollection.

3 BY MR. CLARK:

4 Q Okay. Now, again, as I say, the documents reflect
5 that you were receiving pretty much daily updates on this
6 matter at the end of September and in October; and a number of
7 the FBI documents reflect that they were not getting documents
8 from the RTC because, among other reasons, the RTC was working
9 on new referrals. Do you remember being aware of that in
10 October of 1993?

11 A The only thing in that general area I remember is
12 somebody in Little Rock telling me they were having trouble
13 getting the referrals from -- from the RTC. And I think we
14 offered to try and help and get the referrals over. There was
15 something like nine additional referrals.

16 Q Did you ever actually see those nine --

17 A I don't think so.

18 Q -- new referrals?

19 A I don't think so.

20 Q Do you remember discussing the allegations contained
21 in those new referrals with anyone?

22 A No. In the normal course I wouldn't get involved in
23 it. I would -- if we got the referrals, if they come into me
24 personally, I would send them over to the fraud section for
25 analysis and comment.

1 Q Well, --

2 A I'm not so sure we had gotten them.

3 Q You have no recollection then of anyone, for
4 example, at the Federal Bureau of Investigation saying, we
5 have gotten a referral that names the 1984 Clinton campaign
6 fund as a target of the referral?

7 A As a target of one of the referrals?

8 Q Yeah.

9 A One of the nine?

10 Q Yeah.

11 A I could have had such a conversation. See if I got
12 that, I got the report, I would immediately send it to our
13 public integrity section for analysis as to whether or not
14 there was a campaign violation.

15 Q Did you express to people at FBI headquarters that
16 they should keep you apprised of everything that was happening
17 in connection with the Hale investigation?

18 A I think I did, yes.

19 Q So if they received copies of these nine referrals
20 in the middle of October you would have expected that they
21 would have informed you of any pertinent information in them
22 at about that time?

23 A Yes.

24 Q And you would be upset if they didn't do that?

25 A Yeah. If I asked them to keep me apprised of

1 anything with respect to the Hale allegations, yes.

2 Q The next document I want to show you Mr. Keeney is a
3 two-page document, Bates stamp number 002204 and 002205.

4 A Okay. Have it.

5 Q This is a memorandum with a stamp date of
6 October 28th, 1993.

7 A Okay.

8 Q What was your purpose in sending this memorandum at
9 this time?

10 A Well, to keep the Attorney General and the Deputy
11 Attorney General informed with respect to the Hale matter in
12 general.

13 Q In the very first line, you say the Federal Bureau
14 of Investigation recently reported to the Criminal Division
15 the status of the Little Rock, Arkansas-based investigation.
16 This document doesn't really reflect that you had been talking
17 to people in Little Rock and at the Bureau for over a month.

18 A Upstairs knew that.

19 Q Okay. If they knew the length of time, then why did
20 you have to prepare this document at this time?

21 A I'm trying to see what is new in it. Well, one, he
22 was indicted.

23 Q Back in September.

24 A Yeah.

25 Q Three days after --

1 A Okay. The only thing that seems to be new is the
2 next to the last paragraph with respect to the Governor, Seth
3 Ward. But that's not unusual to, if you have an item, a
4 current item, to give some of the -- some of the background.
5 Because you can't assume that the Deputy Attorney General and
6 the Attorney General retain all the information that has been
7 provided to them in the past, so you try to give them a
8 short -- a short update if you have a reason for sending them
9 an urgent report.

10 Q So between September 20th and October 28th, it was
11 appropriate to give these updates only in oral form and at
12 this point --

13 A Well, there wasn't much in the way of updates as I
14 can recall. It's just we had come to an impasse on the
15 recusal of Paula Casey, which I think took place some time
16 after this memorandum.

17 Q Was it your intent to try to force this issue of
18 Miss Casey's recusal?

19 A Yes. It was just a question of time when she was
20 going to be forced out, because there was no doubt in my mind
21 about that.

22 Q Is there a particular reason why you waited over a
23 month?

24 A I don't know. I don't recall any reason for
25 waiting.

1 Mr. Fishman. To wait a month to write the urgent
2 report?

3 Mr. Clark. To try to force the issue of Miss Casey's
4 refusal. I believe that he said the purpose of this was to
5 force that issue.

6 Mr. Fishman. I don't think that was your question.

7 The Witness. I don't think I said that. I was trying to
8 force the issue but not necessarily with -- with this
9 memorandum.

10 Mr. Fishman. If you read back the question and answer,
11 that wasn't your question.

12 BY MR. CLARK:

13 Q If you look at the second page, 00202 -- 002205,
14 pardon me.

15 A Yeah. Okay.

16 Q On the third to last paragraph Hale has been
17 uncooperative. Given an opportunity to provide information,
18 he refused, stating that he would do so only if given full
19 immunity.

20 A Yes.

21 Q You didn't make any mention of the offer to have --
22 withdrawn. There's no mention of his lawyer's mistrust of
23 Miss Casey's office in there.

24 A No, there's not.

25 Q Was that intentional or is that just an oversight?

1 A Well, I don't know that it was either. I mean, I
2 wasn't trying to conceal that fact. An oversight? Maybe it
3 belonged in there, maybe it didn't. But they had been -- they
4 had been informed of that orally. I just didn't put it in
5 there.

6 Q Showing you now, Mr. Keeney, 006767 and 006768, a
7 two-page -- well, actually, it is a one-page letter. The
8 second page bears a date and time stamp.

9 A Yeah.

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1 RPTS BLAZEJEWSKI

2 DCMN QUINTERO

3 [3:10 p.m.]

4 Q Now, this is Ms. Casey's letter to the RTC
5 investigator saying that the Department has decided not to --
6 has decided to decline to take further substantive action on
7 the 1992 RTC referral?

8 A (Witness nods head.)

9 Q The date of that is October 27th, which is the day
10 before your urgent memo, urgent report to Attorney General
11 Reno. Were you aware that Ms. Casey was going to write this
12 letter when you sent your urgent report on October 28th?

13 A No. If the question is did this letter to Ms. Lewis
14 precipitate the urgent report, the answer would be no.

15 Q Did you ever see a draft of that letter?

16 A I don't think so.

17 Q There is --

18 A Just for clarification, it looks as if there were
19 conversations with the Executive Office of the United States
20 Attorneys rather than with the Criminal Division with respect
21 to her relationship with the RTC. That is my reading of it.

22 Q Well, were you in communication with Ms. Casey in
23 the latter part of October of 1993?

24 A I don't recall being in communication with her. In
25 reviewing it, nothing stands out in reviewing my notes.

1 Q I show you now what is Bates stamped 007541, the
2 last page is 007545. They are consecutively numbered. Now,
3 the first page appears to be the first page of an urgent
4 report. This doesn't have a date on it, but what I would
5 really like you to focus on are the two pages that come after
6 the document.

7 A Okay.

8 Q You will see that there is a significant amount of
9 handwriting on those two pages. My first question is whether
10 you recognize the handwriting?

11 A It could be JoAnn Harris.

12 Q Did you have some sort of briefing with Ms. Harris
13 about the end of October of 1993?

14 A Ms. Harris was, she was sworn in, I think, in
15 November, but she had been there since maybe May. She had
16 been there for a while. She was generally aware of what was
17 going on.

18 Q Was there a particular reason for that?

19 A A particular reason for what?

20 Q That she was generally aware of what was going on.
21 Why was she included in the information?

22 A Why was she included in the information? She was a
23 Department employee, so -- and she was about to become
24 Assistant Attorney General. That was going to be one of her
25 main responsibilities, so it seemed natural to keep her

1 informed.

2 Mr. Clark. It wasn't a trick question.

3 Mr. Fishman. Off the record.

4 BY MR. CLARK:

5 Q Do you recall any specific response that you got
6 from anyone in the Department to this urgent report that you
7 sent out on October 28th?

8 A Is this the one?

9 Q Really the preceding document that you had.

10 A I don't recall anything specific. But it was a
11 matter of continuing interest in the Department, particularly
12 between the second floor, that is the Criminal Division, and
13 the fourth floor, the Deputy's Office, that we were of the
14 view that she had to recuse herself, and it was just a
15 question of what was going to precipitate the recusal.

16 Q You did not instruct Ms. Casey to write the
17 October 27th letter to Ms. Lewis?

18 A I did not instruct. I frequently suggest.

19 Q Did you suggest that she do that?

20 A I don't think so.

21 Q Showing you next 007358 and 59.

22 A Okay.

23 Q Mr. Keeney, was there a particular reason why within
24 four days of sending an urgent report --

25 A Sometimes we send them on consecutive days.

1 Q Okay.

2 A Yeah, The Washington Post and the Wall Street
3 Journal article, the new information, diversion of the Madison
4 Guaranty Funds to political campaigns.

5 Q Now, it says in the second full paragraph on the
6 second page and refers to the two articles that you have just
7 mentioned, it says: "Based upon our review of these press
8 reports, the allegations and the referrals differ from the
9 allegations reported in our October 28th urgent report, and
10 that the referrals center on transactions involving funds
11 allegedly diverted from Madison Guaranty to local political
12 campaigns, including contributions to pay off then-Governor
13 Clinton's 1984 gubernatorial campaign debt and borrowings by
14 Arkansas Governor Jim Guy Tucker during the mid-1980s when he
15 was an attorney in private practice."

16 At the time that you wrote this document, you were not
17 aware from discussion with the FBI of the substance of that
18 particular referral?

19 A Substance of which particular referral?

20 Q Well, the nine new ones. Or were you?

21 Actually, the next paragraph: "We have discussed these
22 new allegations with FBI headquarters and have asked that we
23 be kept posted as developments warrant."

24 Do you see that?

25 A Yeah. I still don't understand your question.

1 Q Okay.

2 My question is, you have discussed the allegations with
3 FBI headquarters, did they tell you they actually had the
4 referrals?

5 Mr. Fishman. Headquarters or --

6 BY MR. CLARK:

7 Q Did they tell you the FBI had the referrals?

8 A I don't know that they did. They had -- as I read
9 this, the FBI had the referrals. Whether they had them in
10 Little Rock or Washington or both, I don't know, but they
11 could very well have had them in Little Rock, and the Bureau
12 was acting on a teletype out of Little Rock, I don't know.

13 Q Okay. You didn't have them?

14 A No.

15 Q You didn't have copies of them?

16 To your knowledge, Gerald MacDowell didn't have copies of
17 them?

18 A Not at that point, no.

19 Q The very last paragraph says: "The Criminal
20 Division's Fraud Section has formed a team of trial attorneys
21 who would be prepared to assume responsibility for the
22 investigation of these matters if that should prove
23 necessary."

24 Let's deal first with that first sentence. When was the
25 team of attorneys first discussed?

1 A I don't know. Sometime prior to this, obviously.

2 Q Were you involved in those discussions?

3 A I was. I was of the view that we had to be prepared
4 to take these over because ultimately Paula Casey was going to
5 have to get out.

6 Q And who was involved in these discussions as far as
7 forming the trial team?

8 A I am almost speculating on this, but it would almost
9 have to have been Jerry MacDowell and myself. We probably
10 discussed it with Public Integrity at that time, too.

11 Q That would be Mr. Gangloff?

12 A I only mention that because some of these are
13 campaign violations, finance violations which would, the
14 expertise is in the Public Integrity Section.

15 Q The three gentlemen who were eventually selected,
16 Mr. Makay?

17 A Makay.

18 Q Mr. Bostwick and Mr. Nixon, what sections were they
19 in?

20 A Makay was in Fraud, and I think the other two were
21 also in Fraud. Nixon was. Bostwick, I am not positive.

22 Q Is that based in Washington?

23 A Yes.

24 Q All three of them?

25 A Yes.

1 Q Were any of them members of the New England Bank
2 Fraud Task Force?

3 A I don't know. I don't think Makay was. Makay was
4 handling cases out of here and he may have tried some in New
5 England, I think he did. Nixon, I don't know, and the other
6 fellow I don't know at all, so I don't know what his
7 background was.

8 Q You were involved personally in that selection
9 process?

10 A Yes.

11 Q And do you know who Deb Smith is?

12 A Debra Smith, yes.

13 Q Who is she?

14 A She is an attorney in the Fraud Section who was head
15 of the New England Task Force, Banking Task Force.

16 Q During what period of time was she on the task
17 force, do you recall?

18 A Oh, sometime in the 1990s. I can't pinpoint the
19 time. She may no longer be there. I am not sure.

20 Q Okay.

21 If I understand you correctly, she was with the
22 Department, meaning main Justice, and then she was also with
23 the task force?

24 A Yes. She tried, among other cases, the reverend
25 down in North Carolina, Bakker, she was co-counsel in that,

1 and she is a fairly experienced trial attorney.

2 Q Now, the ~~second sentence~~ of that final paragraph:
3 "We have discussed the Little Rock investigation with the
4 United States Attorney and the First Assistant United States
5 Attorney in Little Rock. The United States Attorney has not
6 requested our assistance in investigating or prosecuting these
7 matters to date." Those two sentences.

8 A What is the question?

9 Q The question is, is that in any way inaccurate as to
10 your communications with Ms. Casey?

11 A Well, she hadn't requested assistance.

12 Q Does this reflect that you had told her at some
13 point that she should recuse herself?

14 A Does this reflect?

15 Q Yes.

16 A No. But everybody knew that I had taken a strong
17 position on her recusal.

18 Q Did you intentionally leave out of this memorandum
19 the fact that you had urged her to recuse and she had refused?

20 A No.

21 Q You were not trying to mislead Ms. Reno or
22 Mr. Heymann by characterizing the discussions?

23 A Let me add just for the record, I don't mislead any
24 of my superiors. If I did, I should be fired, and if I was
25 doing that I would quit. So I want that straight, okay?

1 Now, if you will rephrase your question, I will try to
2 answer it.

3 Q The question is, by not including in this paragraph
4 the fact that you had told Ms. Casey, had urged her to recuse
5 and that she had refused to do so --

6 A Everybody knew that. There was no need. Now, maybe
7 I was not particular enough to spell out the whole detail on
8 it, but everybody from me on up knew that I felt strongly that
9 she had to get out.

10 Q So that there was no reason for you not to include
11 that information?

12 A No reason not to include it.

13 Q Then the last sentence: "Accordingly, we do not
14 recommend action by the Criminal Division unless requested by
15 the United States Attorney or deemed necessary by events."
16 Can you explain to me what you meant by that?

17 A Yeah. I don't remember us moving to take it over
18 immediately. I was trying to pass the suggestion that
19 ultimately we are going to have to, we are going to have to
20 seriously consider it.

21 Mr. Clark. For the record, we are being joined by Alison
22 Watson who is part of the professional staff.

23 Mr. Sharman has left us for a bit.

24 BY MR. CLARK:

25 Q Do you recall a meeting in main Justice which

1 Ms. Casey attended at which the issue of her recusal was
2 discussed?

3 A No. I do not.

4 Q So you don't recall attending a meeting with Phil
5 Heymann, JoAnn Harris, Larry Urgenson, Joe Gangloff, Anthony
6 Moscato?

7 A No.

8 Was Casey present?

9 Q Yes.

10 A I don't think I have ever met Casey. I realize that
11 some of the scheduling indicates that I was at the meeting and
12 I assume I was invited, but for some reason, if I attended
13 that, I have no recollection of having attended it.

14 Q If I understand it, then, you having pretty much
15 been the point person for the Department between September
16 20th and the beginning of November, meaning Mr. MacDowell was
17 reporting to you, other people perceived that you were the
18 person behind Mr. MacDowell, you had had conversations with
19 Ms. Casey, you are saying that you did not attend a meeting
20 which you had listed in your calendar at which the issue was
21 going to be raised whether she needed to recuse herself?

22 A I have no recollection of attending that meeting. I
23 think it is the type of thing I would have remembered. That
24 is not the first time they have me attending a meeting that I
25 don't go to.

1 Q Was this a matter that you considered important at
2 that time?

3 A Absolutely. I have no explanation as to why I
4 wasn't there, but I have no recollection of having been there.

5 Q Just one moment, please.

6 A If you have got something that would refresh my
7 recollection I would appreciate it, because I agree with you,
8 that it is a meeting that normally I would be expected to be
9 at.

10 Q Well, we may come back to that.

11 Showing you now, Mr. Keeney, two documents. This goes
12 back a little bit in time. The first is 007256 through and
13 including 007263. The first page appears to be by title a
14 routing and transmittal slip, and that is attached to a
15 memorandum for the Attorney General, dated March 16, 1992,
16 reappointment of special counsel, and then the second document
17 007264 through and including 007300.

18 A Okay.

19 Q Mr. Keeney, the transmittal slips on front of each
20 of these two documents is dated September 30th of 1993, and
21 the subject of the memorandum attached in each case concerns
22 the general subject of Independent Counsel, and it appears
23 from the transmittal slips that you sent these memoranda to
24 Attorney General Reno. Do you recall doing that?

25 A I don't have any specific recollection of doing it,

1 but I have no doubt that I did it.

2 Q Do you recall in connection with David Hale
3 discussing the issue of the appointment of the Special Counsel
4 in the period of September and October of 1993?

5 A Well, obviously, there was some discussion, and it
6 seemed like we were heading into a situation in Little Rock
7 where we had to give some thought to one, getting the United
8 States Attorney out of it and, two, either taking it over
9 ourselves or ask for an Independent Counsel.

10 Q And what would be the concern that might cause the
11 topic of Special Counsel being considered?

12 A The allegation that Hale was making against Clinton.

13 Q Okay.

14 Now, obviously, until President Clinton requested it,
15 there was no Special Counsel in this instance.

16 A Right.

17 Q Do you know of a reason for that, why it was not
18 until January that that occurred?

19 A No.

20 Q Prior to January of 1994, did you have a particular
21 opinion that you expressed within the Department on the issue
22 whether a Special Counsel should be appointed in connection
23 with the Hale investigation and the Madison Guaranty
24 investigation?

25 A I don't recall any specific conversations. But I

1 can't say they did not have any such discussion, because there
2 was an obvious thing that if the Hale allegation, if he
3 persisted in that allegation and we had the Clintons on the
4 periphery of Madison Guaranty, that not only the United States
5 Attorney's Office ~~but the Department~~ itself was in a poor
6 position to credibly handle the matter, so obviously I
7 requested materials with respect to the appointment of a
8 so-called administrative Independent Counsel.

9 Q In the period leading up to November and Ms. Casey's
10 recusal, did you consider whether some of the arguments for
11 Ms. Casey's recusal might apply to the Department as well?

12 A Presumably we did, because the Department is loaded
13 with appointees directly appointed by President Clinton. When
14 you are dealing with an allegation against him, credibility
15 still has to be evaluated, you have to give consideration to
16 your options.

17 Q Are you familiar with the Silverado investigation?

18 A Is that the one in Denver?

19 Q Yes.

20 A Involving Bush's son?

21 Q Yes.

22 A I am generally familiar with it, yes.

23 Q Were you involved in the discussions concerning the
24 recusal of the U.S. Attorney from Colorado?

25 A I was not.

1 Q Did that case come up in any of the discussions of
2 the handling of the Hale matter and the Madison Guaranty
3 matter in September and October of 1993?

4 A I don't recall it being discussed. As a matter of
5 fact, I don't recall any -- well, as I say, I didn't have
6 anything to do with the Silverado matter, and I didn't really
7 know that much about it.

8 Q It is fair to say that it was your personal view
9 that this was a case where the allegations required
10 Ms. Casey's recusal but were not such that required a special
11 counsel?

12 A Well, one, I agree they required Ms. Casey's
13 recusal. With respect to a departmental recusal, I guess I
14 wasn't prepared to take the step, absent our people taking
15 over the investigation and getting a little more detailed
16 information as to the specifics and whether or not when we got
17 the specifics we would feel comfortable in handling the
18 matter, but I hadn't reached that point, but it was a matter
19 of some concern, yes.

20 Q Would you and Ms. Casey ever discuss the specific
21 matter of the case being handled by the Department itself if
22 she recused herself?

23 A I think we probably did, because I was of the view
24 that this would be an office recusal with them keeping one
25 assistant in the case and putting a team in from the

1 Department. It almost had to come up in our conversations.

2 Q Why was it, in your view, her entire office had to
3 be recused?

4 A I thought that the leadership of the investigation
5 had to be taken out.

6 Q Why?

7 A For appearances sake, even though the United States
8 Attorney is recused, staff is there, they work for her, and I
9 thought general appearances required it.

10 Q In other words, even though she was not personally
11 involved, her subordinates who would be making decisions could
12 be seen as --

13 A -- being influenced by her.

14 Q Now, a similar sort of argument could be made in
15 connection with the Department itself handling it?

16 A Absolutely, but the Department is a much bigger
17 institution. It is able to handle that sort of a thing better
18 than a relatively small United States Attorney's office.

19 Q And would you just clarify what you mean by the
20 Department being able to handle that better?

21 A Well, the Department has a strong cadre of career
22 people. We really don't care which political party is in
23 office. They do their job, and they keep an eye on each other
24 to make sure that everyone is doing their job, and there is a
25 great deal of confidence in the Attorney General that she

1 would make certain that we did do our job right.

2 Q Okay.

3 To your knowledge, though, Mr. Johnson and Mr. Jackson
4 and the other people who are career people --

5 A I am not casting any aspersions, I am just talking
6 about an appearance problem. I am not casting any aspersions
7 on Paula Casey, I am just talking as a matter of appearance
8 she ought to be out.

9 Q That is perfectly understandable. Who decided to
10 convene the meeting on November 3, 1993 in Deputy Attorney
11 General Heymann's office?

12 A What was the meeting about, can you help me on
13 that?

14 Q That is the meeting which Ms. Casey attended and the
15 matter was discussed whether she should recuse.

16 A I assume Heymann or Nathan convened it.

17 Q You had it listed in your calendar. Do you know who
18 told you that the meeting would take place?

19 A No. But that is not unusual, that the fourth floor,
20 the fourth floor, the Deputy Attorney General's office would
21 call, we want you at a meeting at 2:00 on next Wednesday, the
22 subject matter will be the Jones case. That is just not
23 unusual.

24 Q Were you aware that Ms. Casey was in the Washington
25 vicinity at that time?

1 A I don't know. I have no idea.

2 Q You don't recall a discussion with Gerald MacDowell
3 in which he told you that he had learned that Ms. Casey had
4 come to the Washington area?

5 A I don't recall that, no.

6 Q Did Ms. Casey ever tell you that she had spoken with
7 the people in the Executive Office for U.S. Attorneys on the
8 issue of whether she should recuse?

9 A I don't think so. Well, -- I don't think so. I am
10 not positive about that. It wouldn't make much difference to
11 me. I felt strongly about it, if the Executive Office felt
12 differently, that wasn't going to change my mind.

13 Q Who told you or how did you learn that Ms. Casey was
14 going to recuse herself?

15 A I don't know. Maybe Margolis told me, maybe
16 MacDowell told me. I don't remember.

17 Q If you didn't attend the meeting on November 3rd,
18 did you ask anybody to summarize the meeting for you?

19 A I may have. I may have asked MacDowell or Gangloff
20 what happened, I may have asked Margolis what happened. I
21 don't remember. You know, the bottom line here, it is all
22 right to get into details, but the bottom line is we wanted
23 her out, she was willing to get out, so that was the end of it
24 as far as I was concerned.

25 Q Did you ever have any discussions with Mr. Makay or

1 Mr. Bostwick or Mr. Nixon about the substance of the case that
2 they were taking over?

3 A Yeah, I had to have discussions with them before
4 they took it over.

5 Q Why do you say you had to have?

6 A Because we had selected them, we had selected Makay,
7 I think that is the way it went, then Makay and MacDowell
8 selected the other two, but it was an important assignment,
9 and I think I had contact with them after they started.

10 Q Were there any particular factors in Mr. Makay's
11 background that you deemed very significant to the assignment?

12 A Yes. He was an experienced United States Attorney I
13 think for seven or eight years in Springfield, Illinois. He
14 had tried cases in our Fraud Section with great distinction,
15 and -- including one I think that was in New England. But he
16 was an established trial lawyer with a reputation, and I
17 thought that was what we needed and MacDowell agreed. You
18 know, he worked closer with him than I did. I have known
19 Makay for a long time, but he was working under MacDowell's
20 supervision, and I had to get MacDowell's views.

21 Q Was it your understanding when you formed the teams
22 so before Ms. Casey recused that if these people took over the
23 case they were going to be moving to Little Rock, or what was
24 the arrangement that you anticipated?

25 A Well, that is something -- when you make an

1 assignment or a selection like that and you put people on a
2 long-term investigation, you try to adjust to the people's own
3 personal situations, so it is a matter of discussion. But the
4 views of the attorneys that are assigned are given a great
5 deal of weight, and whether they move down there, whether they
6 come back every week or every other week or something, those
7 are all options.

8 Q Do you recall if there was any arrangement with
9 Mr. Makay, Mr. Nixon, and Mr. Bostwick as to what --

10 A I don't remember the details.

11 Q Once they took over the matter were you maintaining
12 direct supervision of the matter or --

13 A No, MacDowell had direct supervision, and he
14 periodically talked to me about it.

15 Q Did you ever tell Mr. Makay that Charles Banks, the
16 former U.S. Attorney, had thought that the case was bullshit,
17 the case involving Madison Guaranty?

18 Mr. Fishman. Which case? In other words --

19 Mr. Clark. Withdrawn.

20 BY MR. CLARK:

21 Q Did you ever tell Mr. Makay that Charles Banks had
22 believed that the very first RTC referral was bullshit?

23 A I might have said something similar to that, that
24 Banks didn't think much of the referral.

25 Q Okay.

1 Did you instruct Mr. Makay to either review that matter
2 or to not review that matter?

3 A My recollection is that one of the matters to be
4 reviewed was Madison Guaranty.

5 Q Now, understand, there was one referral in 1992 and
6 nine in 1993, the one in 1992 is the one that Mr. Mark
7 MacDougall had concluded did not warrant further
8 investigation. Did you specifically instruct Mr. Makay that
9 that matter had been disposed of and didn't need to be looked
10 at?

11 A Not specifically. Just told him that he should look
12 at the whole thing. The whole savings and loan situation
13 insofar as Clinton and Tucker were involved.

14 Q In other words, in light of Mr. Hale's allegations
15 subsequent to the disposition of the Madison Guaranty matter,
16 it was your view that that matter could be --

17 A Could be reopened. It was up to them as to whether
18 or not they would.

19 Q Maybe in connection with that, though, you did say
20 that Mr. Banks didn't think much of the case?

21 A I may have, yes.

22 Q Okay.

23 A But that was not intended to say don't you go near
24 that. That was just an alert.

25 Q Okay.

1 Well, I don't want to dwell on this long, but was it that
2 Mr. Banks thought the case was bullshit or that he thought
3 that there were extenuating circumstances, particularly
4 Mr. McDougal's personal circumstances, that merited not
5 proceeding with the case?

6 A I just expected them to take another look at it.

7 Mr. Fishman. If I might, can I assume from your use of
8 profanity in the deposition that you have some basis to
9 believe that Mr. Keeney used that same profanity in a
10 conversation with Mr. Makay? Is that the assumption that
11 underlies your question because I don't want to have him adopt
12 that if that was not.

13 Mr. Clark. I have a good-faith basis that somebody in
14 speaking to Mr. Makay, apparently when Mr. Makay first became
15 connected with the case, did use that exact word. I prefer
16 not to use profanities.

17 Mr. Fishman. I understand that.

18 The Witness. I am not the one. Somebody did make that
19 statement.

20 Mr. Fishman. That is why I mentioned that. I don't mean
21 to question your good faith about your base of the question.
22 I am just trying to clear up the record since --

23 BY MR. CLARK:

24 Q I don't mean to attribute you to cuss words.

25 A Thank you.

1 Q So it is your recollection that somebody probably
2 said something akin to --

3 A I don't know that.

4 Q You don't?

5 A No. You asked me what I said to Makay or did I say
6 to Makay that Banks didn't think much of that case. I think I
7 probably did say something to that effect, but the statement
8 that you are attributing was not made by me.

9 Q Okay. In fact, it could have been Mr. Makay's own
10 spin?

11 A It could have been his characterization, right?

12 Q Yes. But you do have a recollection of discussing
13 with --

14 A I have a hazy recollection of discussing with him,
15 as part of the briefing when he was down there.

16 Mr. Fishman. Knowing Mr. Keeney as I do, it seemed that
17 that phrase was not likely to be attributed to him.

18 The Witness. Thank you, Paul.

19 Mr. Clark. Okay, fine.

20 BY MR. CLARK:

21 Q Did you ever discuss Web Hubbell's recusal with
22 Ms. Casey?

23 A I don't think so.

24 Q Did you ever discuss Ms. Casey's recusal with Web
25 Hubbell?

1 A No.

2 Q Again, did you have any conversations with any
3 member of the White House staff about these investigations up
4 until the time of Ms. Casey's recusal?

5 A (Witness shakes head). We have rather strict rules
6 in the Department with respect to discussing specific cases
7 with the White House. That has to be at the Deputy Attorney
8 General level and nobody else is allowed to talk to White
9 House people about a specific case unless they get the
10 approval of the Deputy Attorney General, which is usually not
11 forthcoming.

12 Q Can you identify John Aterberry?

13 A Yes, he is an attorney, I think he may be a Deputy
14 Chief now in the Fraud Section, Criminal Division.

15 Q And back in November of 1993, what was his position,
16 if you remember?

17 A I am not sure. He was a supervisor of some sort.
18 Whether or not he was a deputy at that time or subsequently
19 became, so I don't know. He is a very experienced Fraud
20 Section attorney.

21 Q Okay.

22 By 1993, he had been in the Department a number of years?

23 A Yes.

24 Q Approximately how many?

25 A A minimum of 15.

1 Q I am going to show you now three separate documents,
2 Mr. Keeney. The ~~first, the~~ Bates stamp number is cut off.
3 There is, however, a second Bates stamp number at the bottom
4 right hand side, which is GAC 001687. That is a single page
5 document.

6 A Okay.

7 Q Okay. Then next I am going to give you what appears
8 to be a five page document consecutively numbered, handwritten
9 notes which have the Bates stamp number 000482 through and
10 including 000486. Those are handwritten notes.

11 Do you want to take a very brief break so that you can
12 review those? It will give us an opportunity to collect. I
13 am close to finishing.

14 Mr. Fishman. You have to be.

15 Mr. Clark. Why don't we go off the record for a very
16 brief period.

17 [Off the record.]

18 BY MR. CLARK:

19 Q Mr. Keeney, in addition to the two documents I have
20 previously identified for the record, we have handed you two
21 more. The first is a two page document.

22 The first page has a partially cut off Bates stamp number
23 000487. The second page does not have a main Bates stamp
24 number. ~~It does, however, contain JDA 000178~~ which is
25 consecutive to the JDA number on the previously identified

1 page, which is JDA 000177, and also -- and that is a cover
2 sheet for a facsimile transmission from Don Makay to John
3 Aterberry on the first page.

4 The second page is what appears to be a Department of
5 Justice Office of Public Affairs press release.

6 Then the second document that you have now got for a
7 total of four, Bates stamp number 005134 through 005136, and
8 what that is, the first page is a Department of Justice form
9 document called an action memorandum, and the second and third
10 pages -- the second page, excuse me, is a memorandum for
11 Philip Heymann from Anthony Moscato with a stamp date of
12 December 1, 1993. The third page, 005136 is a November 5,
13 1993 letter from Paula Casey to Philip Heymann.

14 Briefly, Mr. Keeney, according to these notes that we
15 have been provided with which I will represent are
16 Mr. Aterberry's notes, on the very first page 000482
17 references a telephone call with Don Makay. If you look about
18 a third of the way down there is a point in the center of the
19 page and to the right of it: "USA talked with two calls
20 Stern-he is preparing a draft press release. Will clear with
21 JCK."

22 Did you participate in the preparation of the press
23 release that was ultimately distributed by the Department of
24 Justice in connection with Ms. Casey's recusal?

25 A I don't know whether I participated in the

1 preparation. I certainly would have approved it at some
2 point.

3 Q Now, we have been provided with two versions that
4 are slightly different, and what I will refer you to is a
5 single page with the Bates stamp number cut off, there is, on
6 the right lower corner GAC 001687, and that, at the top, has
7 what appears to be a facsimile transmission date of 2-17-93.
8 I am guessing it is 12-17-93. And then the second one is the
9 one that is attached to Mr. Aterberry's facsimile
10 transmission, and that has at the top of that page a couple of
11 fax transmission lines that indicate that that was faxed on
12 November 9th, 1993.

13 What I point your particular attention to is that in the
14 November 9th draft in the next to last paragraph it says:
15 "Keeney said the investigation will be headed by Donald B.
16 Makay, a Senior Trial Attorney in the Fraud Section."

17 In the next to last paragraph of the press release, that
18 appears to have been later and was, appears to have been sent
19 somewhere in December of 1993, in that same paragraph "Keeney
20 said the investigation will be headed by Donald B. Makay, a
21 veteran senior trial attorney." Can you -- well, first of
22 all, were you aware of the distinction at the time that these
23 were prepared?

24 A I don't know.

25 Q Can you explain to me the difference between a

1 senior trial attorney and a veteran senior trial attorney?

2 A There is no difference. It is just a question of
3 wording.

4 Q It is surplusage, then?

5 A Yes, it is surplusage.

6 Q It wasn't part of some effort to bolster Mr. Makay's
7 credentials?

8 A Makay's credentials stand for themselves, by
9 themselves. We didn't need to bolster. I didn't draft it. I
10 may have seen it and probably did, one version of it at least.

11 Q If you would look at the paragraph above that, and I
12 am talking about the single page document with GAC 001687:
13 "The Criminal Division took over the investigation after the
14 U.S. Attorney in Little Rock, Paula Casey, informed the
15 Justice Department last week that she and her staff had
16 recused themselves because of their familiarity with some of
17 the parties and the need to ensure that there be no
18 misperception about the impartiality of the investigation."

19 Mr. Keeney, as a lawyer, the word "parties" has a
20 particular meaning to you; doesn't it?

21 A Yes, it means parties to a proceeding.

22 Q You wouldn't use the word parties to refer to
23 witnesses, would you?

24 A No. This was used in a nonlegal sense, as I read
25 it.

1 Q Well, can you --

2 A I didn't focus on the distinction.

3 Q If I understand correctly, the whole reason as far
4 as you were concerned for taking this over, was Ms. Casey's
5 connection to Mr. Clinton?

6 A Yes. That is the primary reason. The secondary
7 was -- and it was very secondary, was her relationship to
8 Tucker.

9 Q Do you see Mr. Clinton's name anywhere in the press
10 release?

11 A No.

12 Q Was that intentional?

13 A It probably was.

14 Q Is there a reason why?

15 A Well, no need to -- the only relationship of the --
16 well, from my standpoint I didn't ~~see any need to make any~~
17 reference to the President in the press release. Anybody that
18 is familiar with the matter knows what we were talking about.

19 Q Why don't you take a look at Ms. Casey's actual
20 letter 005136?

21 My question, Mr. Keeney, is, is the reason stated in the
22 press release, does that accurately reflect what Ms. Casey
23 said in her recusal letter?

24 A Well, they don't track the recusal letter, but I
25 don't find anything inconsistent with the two documents.

1 Q Remember The Washington Post story of October 31st
2 that --

3 A I remember there was a story, yes.

4 Q And that was in your November 1st urgent report. We
5 have got a copy of the article which I can show you, but that
6 article mentioned President Clinton very prominently. Is that
7 your recollection?

8 A I will accept your statement. I don't recall it.

9 Q Okay.

10 You just said a few minutes ago that anyone who knew
11 anything about these cases knew that President Clinton was
12 involved?

13 A Was one of the persons.

14 Q So there was no real need to protect Mr. Clinton at
15 the time this press release was issued, was there?

16 A No. If you consider ~~this protecting Mr. Clinton.~~
17 It doesn't have anything to do with the investigation. The
18 investigation would nonetheless go on if Clinton is
19 implicated, he simply indicated, but apparently the decision,
20 which I do not disagree with, was not to name the President in
21 the press release as one of the parties with whom Paula Casey
22 was associated which had led to her recusal. It could have
23 been drafted the way I think you are suggesting, but we
24 thought it was unnecessary.

25 Q Okay.

1 So the way to ensure the public of the impartiality of
2 the investigation, which was the purpose of the recusal, is to
3 issue a press release that does not disclose the true reason
4 for the recusal?

5 Mr. Fishman. I have to object.

6 The Witness. That is your characterization. I am not
7 going to buy into that. We frequently make statements where
8 we refer to allegations against a Member of Congress, not John
9 J. Jones, the Representative from Little Rock, Arkansas.

10 BY MR. CLARK:

11 Q I recognize that. And it could have been just as
12 easy to just disclose in the press release that there had been
13 allegations in the press concerning Mr. Clinton.

14 A Could have.

15 Q And that would not have disclosed whether the
16 Justice Department took those seriously or did not.

17 A (Witness nods head.)

18 Q Going back to Mr. Aterberry's notes, on page 2,
19 which is 000483, at the bottom, and again this bears a date of
20 11-9-93, so this would be at the very time that Mr. Makay
21 assumed responsibility for this matter, the handwriting
22 appears to say "USA prepared memo to DM at his request." Then
23 it has numbers one through five, and number one appears to be
24 plead the two-year felony, (count blank); two, get 5 K 1.1
25 motion.

1 You are familiar with that, Mr. Keeney, correct?

2 A If I was I have forgotten about it.

3 Q I mean 5 K 1.1 motion, that concept. Can you just
4 explain for the record what that is?

5 A Well, I assume what they are talking about is a
6 5 K 1, is that cooperations? I am not sure exactly what 5 K 1
7 is.

8 Q Okay, you are familiar with the United States
9 sentencing guidelines?

10 A Yes, and I recognize that that is a reference to the
11 guidelines, but I am no expert on the guidelines is what I am
12 trying to say.

13 Q Have you ever heard the term "downward departure"?

14 A Yes.

15 Q Do you connect or associate --

16 A That is what I assume it is.

17 Q Do you associate 5 K 1.1 with downward departure?

18 A That is what I assume.

19 Q What is your understanding of downward departures?

20 A Well, that you can go -- there is a certain base
21 level of the violation, and with a downward departure you go
22 below that.

23 Q To try to move this along, is it fair to say that
24 these notes reflect that Mr. Makay wanted to know the terms
25 under which he could reach a cooperation agreement with

1 Mr. Hale?

2 A I don't know.

3 Mr. Fishman. I guess to clarify the question, who,
4 according to whose understanding?

5 Mr. Clark. I will rephrase.

6 BY MR. CLARK:

7 Q Does this indicate, these five topics here, are they
8 topics that would normally be associated with the discussion
9 of a cooperation agreement?

10 A Yes, they are. But I don't know whose they are,
11 whether this is something that Makay is passing on to
12 Aterberry for consideration back in the department.

13 Q Or it could be that Mr. Makay just wanted to know
14 what Ms. Casey had said in her discussions with Mr. Coleman?

15 A Could be.

16 Q Look at number five.

17 A I can't read it, for one thing.

18 Q Well, let me suggest to you that it says: "Hale not
19 restricted in congressional inquiry if requested." Did you
20 have any discussion with Mr. Makay on that topic in November
21 of 1993?

22 Mr. Fishman. Let me ask just for the record, the word
23 "restricted" actually does not appear. I don't mean to
24 suggest that you are wrong.

25 Mr. Clark. It is "restr." Maybe it is restrained.

1 Mr. Fishman. I don't know. I just want the record to be
2 clear I don't know what that word is.

3 BY MR. CLARK:

4 Q Then I will suggest that and I will rephrase the
5 question this way, it seems to indicate that there was
6 discussion of whether Mr. Hale might testify before Congress.
7 Do you recall any discussion with Mr. Makay on that issue in
8 November of 1993?

9 A The idea of his testifying before Congress might
10 have been brought to our attention. That is all I know about
11 it. As you know, we can't control whether or not a witness
12 testifies before Congress.

13 Q Okay.

14 My question is do you recall any discussion with
15 Mr. Makay on that point?

16 A I don't know whether we ~~had any discussion~~. I
17 didn't approve any of this.

18 Q I understand that. Okay. I am just pointing out
19 that it appears to --

20 A These were discussions at a lower level in the
21 Department, then I did not approve them.

22 Q Okay.

23 Before approving them, you didn't discuss -- is that
24 your --

25 A It may have been brought to my attention that Makay

1 want to get reaction on these various stipulations. I don't
2 know. I don't recall.

3 I recall hearing the fact that there might have been,
4 that Hale was thinking of testifying before Congress. On the
5 others, it doesn't strike a chord with me.

6 Again, I emphasize these are discussions between two
7 people in the lower levels of the, relatively lower levels of
8 the Fraud Section, and I am not even sure that they ever were
9 presented to me for a decision.

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1 RPTS MCCALLEY

2 DCMN GALLACHER

3 [4:25 p.m.]

4 Q Mr. Keeney, I have now handed you two documents.
5 The first is a single page Bates stamp number 00513 and it
6 appears to be two. It is a routing and transmittal slip which
7 is addressed to you and then to Jerry MacDowell, it appears.
8 The second document is three pages. The top page which does
9 not have any Bates stamp is captioned "Routing and Transmittal
10 Slip," date December 13, 1993, and at the bottom it says, from
11 Gerald MacDowell, chief fraud section, criminal division.

12 The second page is a copy of Paula Casey's November 5,
13 1993, letter to Mr. Heymann. And the third page is the
14 December 1 memorandum for Mr. Heymann from Anthony Moscato.
15 This version has been signed with Mr. Heymann's initials but
16 David Margolis' name acting for Mr. Heymann on December 22,
17 1993.

18 A The question?

19 Q Yeah. The question is the routing and transmittal
20 slip from Mr. Margolis, he addressed it to you.

21 A Yes.

22 Q And the remark section says, I know that the recusal
23 had been orally approved by the reasons stated in Tony's memo,
24 the ones upon which the decision was made and Tony is
25 referenced to Moscato.

1 A Moscato.

2 Q If you didn't attend that meeting on November 3,
3 Mr. Keeney, why is Mr. Margolis sending this to you; do you
4 know?

5 A Because I had been the one dealing with the matter
6 and he was trying to get my reaction as to the -- whether or
7 not these were the reasons for the decision.

8 Q And your reaction was merely to pass it along to
9 Mr. MacDowell?

10 A I probably talked to him about this on the phone.

11 Q Nevertheless, you decided to send it to
12 Mr. MacDowell?

13 A Yes.

14 Q And Mr. MacDowell decided to send a memorandum with
15 an explanation of what had happened at the meeting.

16 A Again your question?

17 Q My question is, did you add remarks that were
18 different from what appears on Mr. MacDowell's memorandum?

19 A I don't think so. They would have been on the
20 bottom here if I did.

21 Q Was the Department concerned about the reasons
22 stated in Tony Moscato's memorandum?

23 A Concerned about the reasons. The reasons are
24 accurate.

25 Q That is not my question.

1 A Well, what is your question?

2 Q I said, was the Department concerned.

3 Mr. Fishman. I object to the form. Who is the
4 Department?

5 BY MR. CLARK:

6 Q Was Mr. Margolis concerned?

7 A I don't know. I just don't know. You're going to
8 have to ask him.

9 Q Mr. Keeney, were you aware that on November 30th
10 someone took notes in a meeting that involved it appears
11 yourself and Mr. MacDowell and the topic of Hill interest and
12 Ms. Casey's recusal was raised. Do you have any recollection
13 of that?

14 A Vaguely, yeah.

15 Q Was the preparation of this recusal memo, memorandum
16 spurred by the meeting concerning congressional interest in
17 the matter?

18 A You mean Moscato's memorandum?

19 Q Yes.

20 A I don't know. Again, you have to ask Moscato. I
21 guess I don't really understand what you're getting at.
22 Anyway, Moscato is the only one who can answer the question.

23 Q Did you, as a result of a meeting to discuss
24 congressional interest in Ms. Casey's recusal, direct that a
25 recusal memorandum be prepared?

1 A I'm sorry, I missed the first part of your
2 question. As a result of a --

3 Q As a result of a meeting to discuss congressional
4 interest in Ms. Casey's recusal, did you direct that a recusal
5 memorandum be prepared?

6 A First of all, I'm not sure that I directed that any
7 recusal memorandum be prepared but I think it was a good
8 idea. I would have been in favor of that. Congressional
9 interest in the matter was not an influencing factor. We are
10 always interested in whether Congress is interested in the
11 matter because they may hold hearings and which can create
12 investigative and prosecuting problems.

13 Mr. Fishman. Do you have the notes of the meeting to
14 which you referred?

15 Mr. Clark. It is 000354.

16 Mr. Fishman. May I?

17 The Witness. I don't know. That suggests to me the
18 possibility that somebody on the Hill requested a copy of the
19 indictment. If it is an existing indictment, we would give it
20 to them. You see something else in there that I don't see?

21 Mr. Clark. Well, I am just saying that what we have is
22 evidence that you attended a meeting on November 30th, 1993.

23 Mr. Fishman. I am sorry, I don't understand where would
24 that be?

25 Mr. Clark. At the very top, AAG.

1 Mr. Fishman. I believe this is Harris, confirms the
2 Attorney General. So I think your assumption is probably
3 incorrect.

4 The Witness. November 30th.

5 Mr. Fishman. Mr. Keeney may have been at the meeting but
6 your assumption about AAG in that context is probably wrong.

7 Mr. Clark. Okay.

8 Mr. Fishman. Just as a matter of timing I believe she
9 was confirmed some time in November.

10 BY MR. CLARK:

11 Q Now, if you look at 000209 and the next page which
12 doesn't have any Bates stamp numbers on it --

13 Mr. Fishman. I think it is 210. Actually, ours does.

14 Mr. Clark. Okay.

15 Q On 210, the memorandum says, Ms. Casey was
16 previously involved in Bill Clinton's gubernatorial campaigns
17 in Arkansas. Mr. Clinton and his wife Hillary Rodham Clinton
18 may have some knowledge concerning loan and check transactions
19 which are the subject of these cases.

20 That information doesn't appear anywhere in her letter of
21 November 5; does it?

22 A No.

23 Q Do you know where Mr. Moscato got that information
24 from?

25 A I don't. Was Moscato at the meeting when she

1 recused?

2 Q Yes, he was.

3 A I think you ought to direct that to Moscato because
4 I had nothing to do with that.

5 Q Finally, let me show you FBI-00001973.

6 A This is from Allen Carver? Can you read this for
7 us?

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1 RPTS MCCALLEY

2 DCMN MAGMER

3 Q Appears to me 12-3-93, Allen Carver. Wade -- which
4 may be I think Chris Wade -- is an FBI supervisor. Somebody
5 from DOJ told WH people -- which I interpret to mean White
6 House people -- that need to co-op -- cooperate -- W slash --
7 with -- FBI and just talk to the FBI. WH said would take it
8 under advisement.

9 A Well, now I can read the with FBI and Justice,
10 j-u-s-t.

11 Mr. Clark. I'm sorry.

12 Mr. Fishman. I think what Mr. Keeney is saying, because
13 of the word "just" or abbreviation for Justice, we're not
14 sure.

15 BY MR. CLARK:

16 Q Okay. In any event?

17 A White House would take it under advisement?

18 Q Advisement. Were you aware that Allen Carver or
19 someone else was communicating with the FBI concerning matters
20 involving Mr. Hale in December of 1993?

21 A I don't know that I was, but Allen Carver was a
22 Deputy Chief in the fraud section. I mean, what is -- what's
23 unusual about that? I mean, the contact? I don't know what
24 the subject is.

25 Mr. Fishman. Can we go off the record for a second?

1 Mr. Clark. Yeah.

2 [Discussion held off the record.]

3 Mr. Clark. We want to go back on the record.

4 Mr. Fishman. I want to put something on the record so it
5 is clear.

6 Mr. Clark. Go ahead.

7 Mr. Fishman. It is my understanding, based on a review
8 of certain documents and communications that the Department
9 has had with the independent counsel, that this particular
10 document to which Mr. Clark has referred may relate to a piece
11 of the investigation originally handled by the fraud section,
12 subsequently assumed by the Office of Independent Counsel, in
13 which White House personnel were interviewed.

14 I don't know that to be true. I'm speculating in part
15 based on having seen other documents of that the independent
16 counsel has requested that we not supply at this juncture to
17 the committee, okay? And I don't mean to suggest that this is
18 not an appropriate area nor the committee and simply to
19 suggest that Mr. Keeney may not have the benefit of that
20 information and you may not, either.

21 Mr. Clark. I'll accept the representation. We'll move
22 on.

23 Mr. Fishman. Okay.

24 BY MR. CLARK:

25 Q Mr. Keeney, towards the end of 1993, Mr. Clinton --

1 President Clinton announced that the White House would turn
2 over documents to the Justice Department, some of which
3 involved Whitewater Development Corporation. Were you
4 involved in the Department's efforts to acquire documents from
5 David Kendall and Jim Hamilton?

6 A Mrs. Harris talked directly to Kendall. I think she
7 talked to Hamilton. I did not.

8 Q Okay. Were you involved in -- in that collection of
9 documents, even if you did not speak directly to Mr. Kendall
10 or Mr. Hamilton?

11 A In the collection of documents from the White
12 House?

13 Q Ah -- yes.

14 A I was probably in discussion with respect to that.
15 We would handle the problem of getting the documents, but I
16 didn't have any conversation with either Hamilton or Kendall.

17 Q Okay. Were you involved in any discussions
18 concerning the -- and without telling us what they were, were
19 you involved in any discussions concerning the issuance of
20 subpoenas to Mr. Kendall and Mr. Hamilton?

21 A I was.

22 Q Okay. My question is, again, without getting into
23 specifics, was there any discussion with Mr. Kendall or
24 Mr. Hamilton to your knowledge that extended them courtesies
25 that the Department would not extend to other defense

1 counsel?

2 A No. No. With respect to Kendall -- and I don't
3 remember the Hamilton part. With respect to Kendall, there
4 was a discussion as to whether or not a subpoena would be
5 issued. I think he actually asked for a subpoena. In my
6 view, it was in the Department's interest to issue that
7 subpoena. I know some people have suggested that Kendall
8 pulled a coupe and he got all his documents under the
9 protection of rule 6(e), but -- and I don't necessarily agree
10 with that, incidentally. But our purpose was if we issued the
11 subpoena we would get full and complete compliance, which was
12 important.

13 Q When you say you don't agree with that, what are you
14 specifically referring to?

15 A Well, some suggestions in the press that Kendall
16 insisted on a subpoena so that -- it was a grand jury
17 subpoena -- so 6(e) would protect all that. That is not
18 necessarily so. It could in certain circumstances, as you
19 well know, and in other circumstances it might not. But our
20 primary interest was getting complete -- complete response,
21 getting all the documents.

22 Q And you personally did not encourage anyone to agree
23 to any restrictions on the Department's ability to use the
24 documents?

25 A No. I don't know that there were any restrictions

1 put on it.

2 Q Just give me one second, please.

3 Very last topic, should be very short.

4 Mr. Keeney, did you participate in any discussions in
5 January of 1994 concerning the appointment of a special
6 counsel, either before or after President Clinton announced
7 that he would request that a special counsel be appointed?

8 A Yes, I submitted some recommended names.

9 Q Was that before or after Mr. Clinton made his
10 announcement, if you recall?

11 A I don't recall.

12 Q And without telling us the particular names, can you
13 tell me the number of names on that list?

14 A I think there might have been 10 on my list.

15 Q And who did you submit those to?

16 A I think I gave them to ~~Dave Margolis~~.

17 Q And at that point he -- which office was he in?

18 A He was in the Deputy Attorney General's Office at
19 that point.

20 Q Did you do that unsolicitedly or were you asked to
21 submit some names?

22 A I was asked to submit.

23 Q And with that, at this point, I have no further
24 questions.

25 Ms. Garcia. Can we go off the record?

1 [Discussion held off the record.]

2 Mr. Clark. We have agreed at this time that because of
3 the hour in the day that at this point we will recess and
4 reconvene. It's our present intention to reconvene tomorrow
5 at 2:30 with Ms. Garcia picking up with questioning by the
6 Minority. Thank you.

7 [Whereupon, at 4:48 p.m., the deposition was adjourned.]
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1 RPTS WHALEN

2 DCMN KRISTOFFERSEN

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4 COMMITTEE ON BANKING AND FINANCIAL SERVICES

5 U.S. HOUSE OF REPRESENTATIVES

6 WASHINGTON, D.C.

7
8
9 - - - - - x
10 In the matter of: :

11 MADISON GUARANTY :
12 SAVINGS & LOAN :

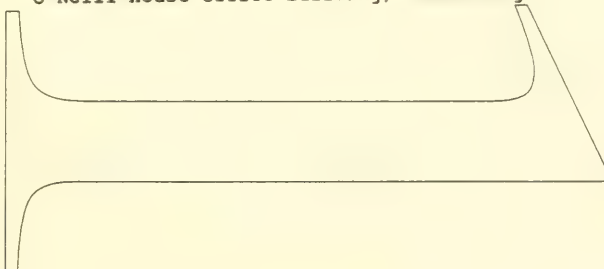
DEPOSITION OF JOHN C. KEENEY

13 - - - - - x

14
15 Thursday, September 14, 1995

16
17 Washington, D.C.

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20 The deposition in the above matter was held in Room 714,
21 O'Neill House Office Building, commencing at 2:37 p.m.



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6 Appearances:
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8 Staff Present for the Banking and Financial Services
9 Committee: Thomas Clark, Senior Counsel; Angela Garcia,
10 Minority Staff.

11 For the Department of Justice:

12 PAUL J. FISHMAN, ESQ.
13 U.S. Department of Justice
14 Office of the Deputy Attorney General
15 10th And Constitution Avenue, N.W.
16 Washington, D.C. 20530
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1 WHEREUPON,

2 JOHN C. KEENEY,

3 a witness in the above-entitled matter, was called as a
4 witness and, having been previously duly sworn or affirmed to
5 tell the truth, ~~the whole truth~~, and nothing but the truth,
6 was examined and did testify as follows:

7 Ms. Garcia. Mr. Keeney, thank you for coming back
8 today. My name is Angie Garcia. I am professional staff with
9 the Minority members of the Banking Committee. We appreciate
10 you coming back for a second day of testimony.

11 The Witness. No problems. Not a big problem, anyway.

12 EXAMINATION BY MS. GARCIA:

13 Q You testified yesterday that, as a general matter,
14 the deputy assistant attorneys general and above testified
15 before Congress; is that correct?

16 A Yes; as a general proposition, yes.

17 Q What is your understanding of why the Department is
18 reluctant to permit employees below the deputy assistant
19 attorney general -- attorney generals?

20 A Because of the possible intimidative effect of them
21 being called before Congress to justify the actions that they
22 may have taken. They would feel that's more properly a
23 function of the upper levels, policy people.

24 Q Does that policy go specifically to assistant U.S.
25 attorneys and trial attorneys?

1 A Yes, it does. Exceptions have been made, but that's
2 the general proposition.

3 Q You also testified yesterday that the RTC 1992
4 criminal referral on Madison Guaranty first crossed your desk
5 in October -- October 7th, 1992, the criminal referral. I
6 believe it was included in an urgent report that was sent up
7 through the chain of command and the Attorney General's
8 Office; is that correct?

9 A Sometime, yes.

10 Q What is the purpose of an urgent report, first of
11 all?

12 A To keep the Attorney General and the deputy attorney
13 general and the associate apprised of current developments in
14 matters which might be of interest to them or which they might
15 be asked about.

16 Q Was this the first time that you -- I'm sorry.
17 Retract that.

18 Is this the first time that you experienced a criminal
19 referral being the basis of an urgent report?

20 A I don't think so, but I can't -- at the moment I
21 can't point to any others, but I don't think it's unique.

22 Q So you were not surprised or -- you were not
23 surprised by finding an urgent report, including a criminal
24 referral as an attachment to the urgent report?

25 A No, I was not, because there was a reference to the

1 President and the First Lady being witnesses in the matter, so
2 that's a matter of interest.

3 Q Okay. You also testified yesterday regarding the
4 Justice Department's consideration of U.S. Attorney Banks'
5 recusal request and his request for a prosecutorial analysis
6 of the 1992 criminal referral.

7 A I'm not sure he made a request for analysis. I
8 think we did it, but I'm not sure -- I would have to look at
9 it again, but I'm not sure that he asked that. He did --
10 well, I'd have to look at it again. He did suggest recusal,
11 and I'd have to look at the document to know what else he
12 said.

13 Q I believe I have Mr. Banks' letter to the
14 Department. Let me just take a moment to find it.

15 A Sure.

16 Q I'm going to show you a letter from Mr. Banks to
17 Donna Henneman of the Executive Office for U.S. Attorneys.
18 The Bates number is 006673 through 006674. If you would like
19 to take a second to look at the letter. I believe the
20 pertinent part is in the last paragraph of the letter.

21 A He's asking to be recused and for the Department to
22 take over from that time forward.

23 Q Does that suggest that he's requesting a
24 prosecutorial analysis be done?

25 A Yeah. He's expecting the Department to do the

1 prosecutorial analysis, and then he followed through with
2 respect to presentation of grand jury and so forth.

3 Q Thank you.

4 Was this the first time that you encountered a situation
5 in which a U.S. attorney requested the Department make a
6 prosecutorial decision or determination in regard to a
7 criminal referral?

8 A No. No, it's not an infrequent occurrence.

9 Q To the best of your knowledge, did the Fraud
10 Section, in moving forward and achieving or creating a
11 prosecutorial analysis of the referral, diverge from any
12 standard practice?

13 A I'm not sure I understand the question, but they
14 followed through in the normal routine, if that's the
15 question.

16 Q Can you describe to me exactly what a trial attorney
17 would look at in determining whether a case has prosecutorial
18 merit?

19 A He would look -- first of all, go through the facts
20 and make a determination as to whether or not the allegations
21 or the information set forth in the referral could be proven,
22 whether there was a prima facie case. If he concluded there
23 was a prima facie case, then he would consider prosecutability
24 and, in doing so, would take into consideration a number of
25 factors which might include the physical or financial

1 condition of the subjects, the dockets -- the docket in the
2 particular jurisdiction, as to whether or not this case was of
3 sufficient import to warrant being prosecuted in that
4 district.

5 In other words, some of the districts -- they have
6 declaration policies. Particularly in banking cases during
7 this period, they didn't take cases below a certain
8 threshold. So those are the -- among the things you would
9 take into consideration.

10 Q Are you aware of whether the Fraud Section attorney,
11 Mark MacDougal, who reviewed the 1992 criminal referral on
12 Madison Guaranty, diverged from that practice, taking all the
13 elements that you just described into consideration, when
14 reviewing the evidence that he had before him?

15 A Well, he purported to consider all the relevant
16 factors -- facts and other matters, yes.

17 Q And you have no knowledge that he did differently
18 than what he purported to have done?

19 A No.

20 Q Yesterday you discussed your dealings with Paula
21 Casey's determination as to whether she should recuse from
22 anything to do with the Madison Guaranty matter.

23 A Yes, I did.

24 Q In doing so, did you -- first of all, have you dealt
25 with U.S. attorneys attempting to recuse from certain matters

1 in your past experience?

2 A Well, yes, I've dealt with United States attorneys
3 who wanted to recuse and United States attorneys who did not
4 want to recuse and I thought that they should. I've dealt
5 with both aspects.

6 Q In which the situations with -- other than with
7 Ms. Casey, in situations which you have experienced in the
8 past regarding a U.S. attorney who does not want to recuse,
9 did you have as strong feelings as you expressed yesterday
10 regarding Ms. Casey's need to recuse?

11 A In the other cases?

12 Q Yes.

13 A Well, you know, if I suggest they recuse, I normally
14 feel that they really should recuse themselves. I guess
15 that's the best I can answer. The relative strength of my
16 feeling, it's hard to assess.

17 Q Okay. Were there instances in those events that the
18 Department actually took such a strong position that they
19 required the U.S. attorney to recuse?

20 A I think I made recommendations in situations where
21 the Department did follow through and directed that the
22 individual be recused.

23 Q In Ms. Casey's situation, did the Department ever
24 direct her to recuse from the Madison Guaranty matters?

25 A Technically, whether she was directed -- I wasn't at

1 the meeting, I think we went into this yesterday, despite the
2 fact that my name was on the list. I don't know that she was
3 directed to, but I think it was strongly suggested to her.
4 Ultimately she voluntarily did it, but it was under some
5 strong encouragement; let's put it that way.

6 Q Okay. In the other situations that you're
7 discussing in which U.S. attorneys -- the Department wanted
8 U.S. attorneys to recuse, and they either did not or didn't --
9 or -- retract that.

10 In situations other than Ms. Casey's where the Department
11 wanted U.S. attorneys to recuse from certain matters, and the
12 Department actually directed those U.S. attorneys to recuse,
13 was there a written statement as to the Department's position
14 on their recusal?

15 A There's a procedure now where, if the United States
16 attorney wants to recuse, they send a memorandum requesting
17 recusal to the Executive Office for United States Attorneys.
18 That memorandum is sent on with the Executive Office's
19 recommendations to the Deputy Attorney General's Office, and
20 that office decides if there will be recusal or not.

21 Q In the event that the Department wants the U.S.
22 attorney to recuse and the U.S. attorney objects to it, is
23 there a written statement in which the Department directs the
24 U.S. attorney to recuse?

25 A Well, the U.S. attorney will be directed, and

1 whether it's always in writing I'm not prepared to say. But
2 yes, they are directed.

3 Q Okay. Am I correct in saying, then, that
4 Ms. Casey's situation -- recusal situation in regard to
5 Madison has been a common situation that the Department has
6 dealt with similarly on prior occasions and possibly in the
7 future it will come up again?

8 A Well, I wouldn't go so far to say that it's common,
9 but it's not an infrequent situation. It's the type of thing
10 that I anticipate will come up from time to time in the
11 future.

12 Q Can you explain to me why it will?

13 A Yeah. Because it's, I think, relatively simple,
14 people acting in good faith. They believe that they can
15 fairly and impartially make a judgment, and they are reluctant
16 to concede that they can't, and, as in this case, I wasn't
17 suggesting that she couldn't be fair and impartial, I was
18 merely suggesting that the appearance was such that it would
19 be in the best interests of the Department and law enforcement
20 if she recused herself.

21 Q In Ms. Casey's situation, did the Department, to the
22 best of your knowledge, ever violate standard procedures?

23 A I'm afraid I don't understand the question.

24 Q In regard to U.S. Attorney Casey's recusal issue?

25 A Uh-huh.

1 Q Did the Department do anything differently in
2 addressing her recusal issue? Did the Department violate any
3 regulations regarding recusals or standards, policies
4 regarding recusals?

5 A No, not to my knowledge.

6 Q Yesterday, in your testimony, you reviewed phone
7 logs in which Webster Hubbell's name was written on a couple
8 of occasions?

9 A That's right, yes, I did.

10 Q To the best of your recollection, do you ever recall
11 discussing with Webster Hubbell anything regarding the
12 substance of the case against Judge David Hale or anyone in
13 connection to Madison Guaranty or Capitol Management Services?

14 A I do not.

15 Q Did -- to the best of your recollection, did you
16 ever discuss with members of the White House anything
17 regarding the substance of the case against David Hale, Judge
18 David Hale, or anyone connected to the -- to Madison Guaranty
19 or Capitol Management Services?

20 A I did not.

21 Q Mr. Keeney, yesterday you established that your
22 tenure with the Department of Justice spans over approximately
23 five decades, which I must say is something to be very proud
24 of.

25 Could you summarize for me, in your opinion, what the

1 role of the Public Affairs Division is in the Department of
2 Justice?

3 A Public Affairs?

4 Q Yes.

5 A To respond -- basically to respond to reporters'
6 questions with respect to matters involving the Department and
7 also to supervise the preparation of press releases and to
8 advise the Attorney General, the deputy, and other officials
9 with respect to public relations matters.

10 Q The Public Affairs Division, then, I understand, is
11 a public relations -- the public relations agency, so to
12 speak, of the Department of Justice?

13 A Yes.

14 Q Is its purpose to promote the reputation or -- the
15 reputation of the Department?

16 A Its purpose is to present the Department's position
17 on matters in the best possible light.

18 Q Okay. I'm going to refer you back to the two press
19 releases you looked at yesterday. They are both regarding the
20 appointment of Special Counsel Mackay. It is Bates number
21 000327 and 000487 through, I believe, 488.

22 A Okay.

23 Mr. Fishman. Would you describe which one is which, if
24 you would? One of them has "Department of Justice" in large
25 letters in the middle, and one of them says "U.S. Department

1 of Justice, Office of Public Affairs." Which is which?

2 Ms. Garcia. Okay.

3 Mr. Fishman. Because I'm working off a different copy.

4 Ms. Garcia. 000487 through 488 has "U.S. Department of
5 Justice, Office of Public Affairs" in small letters. 000327
6 has "Department of Justice" across the top.

7 Mr. Fishman. Okay. Thank you.

8 Ms. Garcia. Also 000487 through 488 was transmitted from
9 Don Mackay to John Aterberry on November 9th, 1993.

10 Mr. Fishman. By fax.

11 Ms. Garcia. By fax, while 000327 was transmitted by fax
12 on December 17th, 1993.

13 Mr. Fishman. Thank you.

14 Ms. Garcia. The difference in the second version,
15 000327, is that in paragraph three the word "veteran" is used
16 to describe Donald Mackay. He is described as in, quote,
17 veteran senior trial attorney, close quote.

18 The Witness. Okay.

19 Mr. Fishman. We have got it here.

20 The Witness. I got it.

21 BY MS. GARCIA:

22 Q In understanding what the role of the Public Affairs
23 Division is in the Department of Justice, is it reasonable
24 that the Public Affairs Division might have in a second draft
25 including the word "veteran" in a description of Donald

1 Mackay?

2 A Is it reasonable? Well, he is a veteran trial
3 lawyer. He's also a senior trial lawyer. There's redundancy
4 in there, but I don't know how it came about.

5 Q Am I correct in saying, then, as you just said,
6 Mr. Mackay is a veteran, he has been with the Department of
7 Justice for a length of time that would permit him to be
8 called a veteran?

9 A Yes.

10 Q Speaking of Mr. Mackay, yesterday you also discussed
11 the Department's move forward in appointing a special
12 prosecutor. Apparently the Department considered some
13 applicant -- not applicants, but some employees of the Justice
14 Department, and chose Mr. Mackay to fulfill the position of
15 prosecuting the --

16 A You mean when we selected Mr. Mackay, we considered
17 a lot of other people.

18 Q There was a process of considering?

19 A Yes, there was. Yes.

20 Q Okay. In that process, do you have any knowledge of
21 the Department violating regulations that guide the process in
22 determining an attorney to take over the prosecution of the
23 case?

24 A I don't think there are any guidelines that guide an
25 attorney taking over the prosecution of a case, but this thing

1 was done not normal course. As I understand it, we considered
2 the various people that might be available and made a
3 selection.

4 Q Have you ever encountered this kind of appointment
5 or process before in your career?

6 A Oh, sure. I mean the -- whenever -- well, not
7 whenever, but frequently when we have a major case, there's a
8 discussion as to who is the best available attorney to handle
9 that case. So that's pretty standard.

10 Q And that same process was applied to choosing
11 Mr. Mackay to move forward?

12 A Yes.

13 Q In regards to the Department's appointment of an
14 independent counsel, which I believe occurred in January of
15 1994, did the Department follow standard policy or procedure
16 in appointing the independent counsel, Fiske, to the best of
17 your knowledge?

18 A Well, there was a selection process again, and a lot
19 of names were submitted for consideration, and once a name was
20 selected, then there is a procedure set up for it in the
21 regulation for the appointment of such an outside prosecutor,
22 and that was followed.

23 Q I'm going to close here with quite a broad question,
24 and I hope you will just give it some thought.

25 In the course of the Department of Justice consideration

1 of Mr. Banks' recusal and the prosecutorial analysis of the
2 1992 criminal referral on Madison Guaranty, along with
3 Ms. Casey's recusal and the appointment of an independent
4 counsel and any other matters that pertained to Madison
5 Guaranty or the President's involvement --

6 Mr. Clark. Objection, compound.

7 Ms. Garcia.

8 Q To the best of your recollection or knowledge, did
9 anyone violate standard procedure or move to do something
10 different in regard to the handling of those issues?

11 A Not that I'm aware of.

12 Ms. Garcia. Okay. Thank you for coming back a second
13 day.

14 The Witness. Thank you. Now I can complain if you keep
15 me too long.

16 Mr. Fishman. You can complain if I keep you too long,
17 and, at the risk of belaboring just a couple of points, I want
18 to break down part of Ms. Garcia's question, her last
19 question, just a little bit.

20 EXAMINATION BY MR. FISHMAN:

21 Q You have been, as Ms. Garcia said, with the
22 Department for several decades, correct?

23 A Yes.

24 Q To your knowledge, in the 44 years you've been with
25 the Department -- let me rephrase that.

1 Certainly recently in your experience, would it be a fair
2 characterization to say that you are brought into sensitive
3 criminal matters because of your experience?

4 A That's probably true, yes.

5 Q And recognizing that this question poses a little
6 bit of a modesty issue for you, is it also fair to say that
7 one of the reasons you are brought into these sorts of matters
8 is because your integrity is essentially unquestioned, as far
9 as you know?

10 A I hope so, yes.

11 Q And within the Department, you are and have been
12 essentially viewed as an apolitical career prosecutor?

13 A I think so, yes.

14 Q Is it fair to say that, from your perspective and as
15 far as you know, during the time that the original criminal
16 referral came into the Department in the fall of 1992, that
17 is, as best as you can tell, based on your knowledge, that it
18 was handled professionally and appropriately by the people
19 then in charge of the FBI and the Department of Justice?

20 A Yes. The only criticism that might be lodged there
21 is the fact that the recusal memorandum took a long time to be
22 answered.

23 Q Before that. I'm talking about the fall of '92, the
24 original urgent report and the original --

25 A Oh. It was handled in the regular course.

1 Q Okay. Now, with respect to the recusal of
2 Mr. Banks, again, ~~is there anything~~ that you know about that
3 indicates that it was handled in any way that untoward?

4 A No.

5 Q Now, you mentioned that it could have been handled
6 faster?

7 A It could have been handled faster, yes.

8 Q Is there anything unusual in that, in your
9 experience in the Department?

10 A Anything unusual?

11 Q In the -- in something not be handled expeditiously?

12 A Well, this wasn't handled -- my understanding -- and
13 I'm not positive of this -- it came in during a period when
14 the administration was about to change, and that also during
15 that period after the change of administration, during the
16 whole period there was a vacuum in that I think was the Deputy
17 Attorney General's Office there was only one person, and there
18 was an acting attorney general. So I assume that's the
19 explanation for the delay.

20 Q To your knowledge, did anyone intentionally slow it
21 down?

22 A Not to my knowledge.

23 Q And then again with respect to Paula Casey's
24 ~~recusal, as far as you know, did anyone make a decision based~~
25 on any improper motivation?

1 A No.

2 Q And I'm talking about not necessarily with respect
3 only to the U.S. Attorney's Office in Arkansas but in the
4 Department of Justice itself.

5 A No.

6 Q Let me very quickly, if I could, just go through
7 some of the documents that Mr. Clark showed you yesterday just
8 to clear up a few things that may remain outstanding.

9 First of all, yesterday he showed you a document mass
10 marked JCK2, and you identified that as a telephone log?

11 A Yes.

12 Q And the name, Chuck Owens, appears on that log. You
13 see that?

14 A Yeah.

15 Q Who is Mr. Owens?

16 A All I know is what's on there. I don't remember
17 Owens at all. We were asked to go through the logs and
18 reflect each situation where I had received calls or met with
19 FBI, and this is one of the results.

20 Q Okay. Now, you say you were asked to go through and
21 identify FBI contacts, and that was --

22 A FBI and Web Hubbell, and I forget what else it was.

23 Q And that was a committee request?

24 A Yes.

25 Q In the scope of your responsibilities as a deputy

1 assistant attorney general, as the acting assistant attorney
2 general, how much contact do you have with the FBI?

3 A Very frequent.

4 Q Is the quantity and the frequency of your contact
5 with the FBI captured by your telephone logs and calendars?

6 A Yes. There may be meetings with them where I didn't
7 have any notes, but for the most part the statement is
8 accurate, yes.

9 Q When you say for the most part, are there others --

10 A There may have been other meetings with the FBI that
11 I didn't take any notes.

12 Q And would they all be on your calendar? Is the
13 calendar kept by your secretary?

14 A It depends.

15 Q That's what I'm getting at. I'm trying to figure
16 out what the depends is.

17 A I mean it came up yesterday, but I've attended
18 meetings that are not on the calendar, the reason being,
19 assistant attorney general will be meeting with somebody, and
20 she or he will press the buzzer and say, "Come in here, I want
21 you to participate," and it's not on my calendar.

22 Q Now, why would something be on your calendar that
23 you don't go to?

24 A ~~It's because somebody came up and I couldn't go to~~
25 it. Something was deemed more important than the meeting that

1 was on the calendar.

2 Q Okay. Is that an extremely unusual occurrence? a
3 frequent occurrence?

4 A It happens occasionally.

5 Q There's a document Mr. Clark showed you yesterday,
6 00184, 183 and 185, which again were telephone logs reflecting
7 contacts with U.S. Attorney Banks. Do you have those in front
8 of you?

9 A Yeah.

10 Q And Mr. Clark asked you some questions about your
11 contact with Mr. Banks and asked you about how those contacts
12 originate. Do you recall that?

13 A Uh-huh.

14 Q Can you explain as a general proposition what kind
15 of contacts you have with U.S. attorneys or U.S. attorneys'
16 offices, personally?

17 A Well, take with Banks. One of the contacts I had
18 with Banks was the -- there was a conflict between U.S.
19 attorney in Los Angeles and Charles Banks over the handling of
20 a particular matter, and I was sort of referee on it.

21 Q When you say you were sort of a referee, does that
22 happen formally or informally?

23 A Both. Mostly informally.

24 Q And what does that mean?

25 A It means that you try to come up with a resolution.

1 Q How do you get involved, as a general matter, in an
2 informal --

3 A Well, I gave you the example with Banks. Another
4 one might be, assistant attorney general will say there's a
5 problem between -- as there frequently is, between the
6 Southern District of New York and Eastern District of New York
7 or the Southern District of New York and Eastern District of
8 New York and Newark, and I get involved with those.

9 Mr. Clark. If I might interject, that would never
10 happen.

11 Mr. Fishman. I just note for the record, there is a
12 smile on Mr. Clark's face, and I guess although Mr. Clark,
13 having been an assistant U.S. attorney in the Southern
14 District of New York, and I have been an assistant U.S.
15 attorney in Newark, would understand what you mean.

16 Could you explain for anyone else and for Ms. Garcia, who
17 has not been a prosecutor, and for anyone else who might be
18 reading this transcript, when you say dispute, generically
19 what kinds of things are you talking about that you would
20 referee in that sort of posture?

21 The Witness. Well, one, between the Southern District
22 and Eastern District, it is not uncommon for them both to want
23 to prosecute the same organized crime figure, and there is
24 venue in both districts; both of them have some claim to the
25 prosecution, and they can't resolve it.

1 I suspect the same thing is with respect to Newark, and I
2 know this is one that you are familiar with, Paul, a
3 white-collar-crime case where Newark claimed that they had the
4 better venue, and Southern District had the investigation with
5 the ACC, and we were asked to look at it, and I was given the
6 responsibility for that.

7 BY MR. FISHMAN:

8 Q Would it be fair, without putting words in your
9 mouth, to characterize the relationship among various U.S.
10 attorneys' offices as friendly and competitive?

11 A Yes.

12 Q And it's your job to make sure that it stays that
13 way in many instances?

14 A Yes.

15 Q Now, again, yesterday Mr. Clark showed you a
16 document that was marked JCK3 which was an excerpt from the
17 Banking Law Reporter and discussed various procedures with you
18 for criminal referrals. Do you remember that?

19 A Yes.

20 Q And I think he asked you -- and either you or he
21 can correct me if I am wrong -- that one of the points or one
22 of the purposes of this procedure that's embodied in that
23 document was to encourage earlier rather than -- to encourage
24 banking authorities and regulated institutions to make
25 criminal referrals earlier rather than later.

1 A Criminal referrals or contacts with the prosecutors
2 so the prosecutor can give the agency the benefit of his or
3 her views as to whether or not the matter would be prosecuted
4 in that particular district if the allegations were provable.

5 Q Okay. And is it fair to say that one of the goals
6 of that -- well, I don't want to put words in your mouth.
7 What is the goal of doing that?

8 A The goal is to preserve what we have described as
9 precious investigative resources. We have the same policy
10 with the inspectors general and --

11 Q Whose resources are we concerned about?

12 A We are concerned about the resources of the agency
13 rather than Justice.

14 Q And when you say the agency, are you talking about
15 the FBI, which might take over the case or come into it, or
16 the referring regulatory agency?

17 A Primarily the referring regulatory agency.

18 Q And so the idea is to let the regulatory agency know
19 at an early stage whether to spend more time investigating?
20 Is that the --

21 A That's the idea, whether it would be productive to
22 spend more time investigating.

23 Q Okay. Now, let me show you a document that's Bates
24 stamped 006676, which is the memo dated March 19th, 1993, that
25 Mr. Clark showed you yesterday from you to Mr. Frazier. Do

1 you have that in front of you?

2 A Yes.

3 Q You were asked yesterday by Mr. Clark whether you
4 had read this memo before it was signed, and I believe you
5 testified that you didn't know.

6 A This memo, yeah. Certainly that's true with respect
7 to the MacDougal memorandum which is attached. I don't have
8 any recollection of having read that.

9 Q And you said something yesterday about --

10 A And I probably didn't see this as such.

11 Q When you say this as such, the memo itself?

12 A The memo as such, but I believe Mr. Urgenson
13 discussed it with me.

14 Q Let me stop for a minute. Mr. Urgenson -- at this
15 time, in March of 1993, you were the acting assistant attorney
16 general?

17 A Yes, I was.

18 Q And Mr. Urgenson was acting as your deputy assistant
19 attorney general?

20 A Yes, that's right.

21 Q Can you tell us a little bit about Mr. Urgenson's
22 background, if you know?

23 A Yes. His background, he was an assistant -- first
24 assistant in the Eastern District of New York, came down to
25 Washington, headed the Fraud Section, and subsequent to that

1 and during this period was an acting deputy assistant attorney
2 general.

3 Q So the record is clear, you said the first assistant
4 in the Eastern District of New York; that's the person right
5 under the United States attorney?

6 A That's right.

7 Q Now, you said yesterday that Mr. Urgenson had the
8 power to sign your name to a memorandum?

9 A That's right.

10 Q Can you explain how that comes about?

11 A Well, deputies general have the -- are authorized to
12 sign for the assistant attorney general. They exercise their
13 own discretion as to whether or not it's a matter that the
14 assistant attorney general should see before it's approved.

15 Q And so without characterizing whether this -- his
16 signing this particular document was standard or not, leaving
17 that aside, as a general matter, is it an ordinary business
18 practice of the Department of Justice for deputy assistant
19 attorneys general to sign for the assistant attorney general?

20 A It is.

21 Q And is that limited to that particular relationship,
22 or are there other relationships in which that exists?

23 A Well, there are other relationships. If the -- if
24 the deputies were not authorized to sign, it would slow down
25 the work of the -- applying it to the Criminal Division. It

1 would slow down the work of the Criminal Division
2 tremendously.

3 Q And I take it by March of 1993, Mr. Urgenson had
4 been with main Justice for some substantial period of time?

5 A Yeah, he had. I'm trying to remember exactly how
6 long. Three or four years, I'd say.

7 Q Okay. Now, again, to be clear, you were the acting
8 assistant attorney general because there was no assistant
9 attorney general?

10 A That's right.

11 Q Mr. Mueller, who had been the assistant attorney
12 general, had left?

13 A On January 20th.

14 Q And Mrs. Harris became the assistant attorney
15 general in November of 1994?

16 A That's right.

17 Q You said yesterday, though, that she got to the
18 Department before she was the assistant attorney general?

19 A That's right.

20 Q How does that work?

21 A Well, she was brought on as a -- I guess the title
22 was consultant to the deputy or the Attorney General; I've
23 forgotten which.

24 Q After she had been designated as the potential
25 nominee or to be the assistant attorney general or at some

1 point in relation to that process?

2 A At some point when it was either anticipated or she
3 had been nominated. I think it was when she was anticipated.

4 Q And was that the same -- did the same kind of thing
5 happen with Mr. Hubbell when you discussed that yesterday with
6 respect to his becoming the associate?

7 A Yes.
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1 DCMN MAYER

2 Q Has that happened before in your experience, that
3 people come on?

4 A It's happened. I wouldn't say it's a frequent
5 occurrence, but it's not unusual.

6 Q Okay. Now, let me show you what's Bates stamped
7 000317, which is, I believe, an excerpt of your handwritten
8 notes from April 7th, 1993 that Mr. Clark showed you
9 yesterday.

10 A Yeah, those are my handwritten notes.

11 Q Now, there's a reference, the last reference on the
12 page says, Web Hubbell, keep up to date on any developments;
13 is that right?

14 A Yes.

15 Q Did that have anything to do with Madison Guaranty
16 or Whitewater or any matter that we've been discussing here
17 over the last two days?

18 A No.

19 Q And you state that relatively unequivocally. Can
20 you explain how you know that?

21 A Well, I've never discussed Whitewater-related
22 matters with Web Hubbell.

23 Q Why not?

24 A Well, it would have been inappropriate because of
25 his relationship with the President and the White House. I

1 was aware of the fact of that relationship, and I would not
2 have discussed it with him. And if I -- if the issue was
3 raised, I would have remembered it because it's the type of
4 thing one remembers.

5 Q How much contact did you have with Mr. Hubbell who
6 was the Associate Attorney General?

7 A I had three or four contacts with him. One of them
8 I referred to yesterday was a personnel matter, which the
9 Attorney General -- Criminal Division personnel matter, which
10 the Attorney General asked him to handle, and I had contact
11 with him on that. I had contact with him on the Ford
12 prosecution, Congressman Ford in western Tennessee, and I had
13 contact with him on another matter that he brought to my
14 attention, an allegation of possible violation by somebody in
15 the Department, and I had contact with him on that. I don't
16 recall much else in the way of contacts with him. I've
17 attended meetings with him --

18 Q As a --

19 A -- where a lot of people were in attendance. And I
20 think early in his regime he used to ask me if he could do
21 this or if he could do that -- that was when he was very
22 new -- and I would give him the benefit of my views on the
23 subject.

24 Q Generically, what kinds of subjects are you talking
25 about?

1 A Whether or not on a personnel matter he could -- one
2 that I remember, whether he could have access to the file.

3 Q To come back to your calendar just for one second, I
4 apologize for jumping out of order, but I'm sort of going
5 through the documents in the order Mr. Clark showed them to
6 you yesterday, and I have a piece of paper, several pages of
7 your calendar. How do things get onto your calendar?

8 A Normally, my secretary puts them on, but sometimes I
9 do it myself.

10 Q And if your secretary puts them on, do people call
11 you or do they just call her?

12 A Both.

13 Q Or either, as the case may be?

14 A Either one, right.

15 Mr. Clark. Can we -- just so the record is clear, can
16 you just identify by the Bates stamp number first and last
17 page?

18 Mr. Fishman. Sure, I think it's 145 through 168 were the
19 group.

20 Mr. Clark. Just for the clarity of the record.

21 Mr. Fishman. Not a problem.

22 BY MR. FISHMAN:

23 Q Yesterday, Mr. Clark showed you, and I don't have it
24 handy, I believe, but he showed you a -- here it is -- a
25 document marked 1982, which is the cover page of a fax to you,

1 with documents attached, from Mr. Carver, dated September 20,
2 1993; and the documents that are attached are the recusal
3 packages, I'll call it, relating to Mr. Banks.

4 Do you see that?

5 A Yes.

6 Mr. Clark. Can you again just use the Bates stamp?

7 Mr. Fishman. I'll be happy to. I believe the whole
8 package is 1982 through 1996.

9 Mr. Clark. Thank you.

10 BY MR. FISHMAN:

11 Q And Mr. Clark asked you whether there was something
12 that had prompted your asking Mr. Carver to send you that
13 document; do you remember that?

14 A I do, yes.

15 Q Let me show you what the document that is Bates
16 stamped 7746, which is part of a larger document Bates stamped
17 7736 through 7767, most of which, although as Mr. Clark
18 pointed out yesterday with respect to two newspaper articles,
19 not all of which appear to be excerpts from the notebook of
20 Mr. Gangloff. Okay, and at the bottom of page 7746 there is a
21 notation; it says JCK, with a colon, do you see that?

22 A Yes.

23 Q And then there are three lines of handwriting, and I
24 wonder if you could read them.

25 A Well, the first one says, series of allegations

1 against Clinton. And then there's a slash and then there's,
2 per Paula, nothing there. That's what it looks like to me.

3 Q And then there's an arrow and it says, Johnson; is
4 that --

5 A It could be Johnson.

6 A That looks like 30.

7 Q 30 or thinks?

8 A Thinks, okay.

9 Mr. Clark. I think it's thinks.

10 BY MR. FISHMAN:

11 Q If I could suggest, thinks -- if Mr. Clark disagrees
12 with my reading, or Ms. Garcia -- Johnson thinks last fall's
13 letter concerned this?

14 Mr. Clark. That's what I would read it as.

15 BY MR. FISHMAN:

16 Q Obviously, we are going to be deposing Mr. Gangloff,
17 and we may get a different reading. But for the purposes of
18 this, would it be fair to say that these notes of September
19 20th appear to refer to the document that may -- that may
20 refer to the document, 1982?

21 A It could.

22 Mr. Clark. One second, please.

23 BY MR. FISHMAN:

24 Q And then, if I could, just two other matters that
25 are raised yesterday by Mr. Clark that are referred to in

1 these notes. One is on the same page, a little higher up,
2 7746. There are some -- Mr. Clark asked you yesterday about
3 discussions relating to a -- let me back up.

4 Do you recall being asked yesterday by Mr. Clark about
5 discussions between the U.S. attorney's office in Arkansas and
6 Judge Hale's lawyer, regarding possible testimony or
7 cooperation?

8 A Yes.

9 Q Okay. And at the top of page 7746, there are notes,
10 and I would like you to read them if you could.

11 A Okay. JCK, one, get detail proffer from attorney.

12 Q Okay. And two?

13 A From defendant.

14 Q With?

15 A With no promises.

16 Q Okay.

17 Mr. Clark. Okay. With the understanding that there's
18 just the letter W, but it appears in context that that is
19 shorthand for the word "with."

20 Mr. Fishman. Fair enough.

21 BY MR. FISHMAN:

22 Q And then what follows that? And again I don't mean
23 to suggest that there's anything different in these notes
24 Mr. Keeney testified to yesterday, so -- but I just want to --

25 And then it's MJ?

1 A Would accept proffer, 5K, substantial, useless as
2 immunized witness.

3 Q What do you interpret, useless as immunized witness
4 to mean?

5 A I don't know, just generalizing that. Normally, I
6 would use it in a sense of, you're talking with somebody with
7 respect to some sort of a disposition, whether it's going to
8 be immunity or otherwise; and generally the government's
9 better off if the individual pleads to some sort of violation
10 rather than getting straight immunity.

11 Q Why is that?

12 A Because it demonstrates to the jury that -- one,
13 that he's admitting complicity in the matter; and two, that he
14 is not necessarily getting a sweet deal from the government in
15 order to introduce his testimony.

16 Q Uh-huh.

17 Now, yesterday Mr. Clark asked you about the need to send
18 various urgent reports to the Attorney General?

19 A Yes.

20 Q Do you recall that?

21 And I believe you testified that you had been keeping the
22 Deputy Attorney General's office apprised of this matter as it
23 went along?

24 A Yes.

25 Q If I could, let me show you page 7749, which is

1 another page in the same notebook, and ask you if you can take
2 a look at that.

3 A Okay.

4 Q Okay. Have you had a chance to read it?

5 A Yeah. I'm having difficulty reading it.

6 Q You're having trouble just deciphering the
7 handwriting?

8 A Yes. Conference call. McDowell, JCK, IN would
9 probably be Irv Nathan was who --

10 A Irv Nathan at that time was the Associate Deputy
11 Attorney General.

12 Q And again because there are lots of people with lots
13 of similar-sounding titles in the Department of Justice, the
14 Deputy Attorney General at the time was Phil Heymann?

15 A Yes.

16 Q And in the hierarchy of the Department, that's the
17 number two position?

18 A That's right.

19 Q And then the Associate Attorney General is the
20 number three position?

21 A That's right.

22 Q And then below that there's a layer of Assistant
23 Attorneys General?

24 A And the Solicitor General.

25 Q Although where the Solicitor fits in that hierarchy

1 is somewhat less clear?

2 A Right.

3 Q But below the number two and number three there's a
4 range of people who might be considered at the number four
5 level?

6 A Right.

7 Q And you were acting in that capacity when you were
8 the acting Assistant Attorney General?

9 A Yes.

10 Q The Attorney General and the Deputy Attorney General
11 and the Associate Attorney General may have personal staffs
12 who are outside the hierarchy, correct?

13 A That's right.

14 Q And rather than belabor this, would it be fair to
15 say that Mr. Nathan was in fact the principal Associate Deputy
16 Attorney General, which made him the most senior member of
17 Mr. Heymann's personal staff?

18 A That's right.

19 Q Now, and then, so you were saying the notes reflect
20 a conference call on September 20th among you, Mr. McDowell,
21 and Mr. Nathan, and presumably Mr. Gangloff since they are his
22 notes?

23 A Yes.

24 Q And?

25 A This says, Irv wants -- could be leads and bureau.

1 Q And bureau you interpret to mean?

2 A FBI.

3 Q Okay. And then below that it says?

4 A Per DAG.

5 Q Let me stop you. DAG?

6 A Deputy Attorney General.

7 Q Okay.

8 A Via IN.

9 Q And then there are a number of things.

10 A Let them proceed, Hale is one. We will pursue -- we
11 shall or should pursue leads. Focus, it looks like equal
12 signs, Madison loan.

13 Another one is paper trail, pursue things without
14 specific cooperation of Hale.

15 Q Okay. And without belaboring what those particular
16 notes mean, in the sense they are Mr. Gangloff's notes, is it
17 fair to say that that reflects that Mr. Nathan was involved at
18 a very early stage, as you testified yesterday?

19 A Yes.

20 Q Okay. Now, there came a time, as you testified
21 yesterday, when your view of the recusal issue carried the day
22 and Ms. Casey recused herself?

23 A She recused herself.

24 Q If I could, and again, since experience is not
25 universal and Mr. Clark and I are both former prosecutors in

1 large districts, is there a difference -- let me stop a
2 second.

3 Does the Criminal Division relate differently to large
4 districts like the Southern District of New York and smaller
5 districts like the -- well, let's not use Arkansas, but
6 smaller districts like New Hampshire or Iowa?

7 A It does.

8 Q Okay. Can you explain that?

9 A Yes. Because the larger districts have a larger
10 number of attorneys, they have specialization and usually they
11 have experience in complicated cases and in complicated
12 handling of -- complicated, delicate matters. That's not
13 necessarily true in a smaller district.

14 Q Now, is it unusual for the Criminal Division -- let
15 me back up.

16 When a U.S. attorney's office is recused from a matter,
17 in your experience, who is assigned to take over that matter?

18 A Well, there are two options. One is to have another
19 United States attorney office take it over and the other one
20 is for the Department to take it over.

21 Q And in your experience, which generally happens, if
22 you can generalize?

23 A It's hard to generalize because the answer depends
24 on the particular administration. I think towards the end of
25 the Bush administration, the tendency was to put recusal

1 matters in another United States attorney's office. I think
2 in this administration, under Ms. Reno, the tendency is to
3 have the Department handle it.

4 Q Okay. And when -- are there cases that the
5 Department handles in U.S. attorney's offices or in other --
6 in various districts when the U.S. attorney's office is not
7 recused?

8 Mr. Clark. Could I have that read back, please.

9 Mr. Fishman. Sure. Rather than read it back, I will
10 just rephrase the question.

11 BY MR. FISHMAN:

12 Q Aside from cases in which the Criminal Division
13 assumes responsibility for a matter in which a U.S. attorney's
14 office is recused, are there cases that the Criminal Division
15 litigates or investigates throughout the country when a U.S.
16 attorney's office is not recused?

17 A Well, the -- there's an automatic recusal policy
18 with respect to investigations of Federal judges in the
19 District. So the Department takes over all of those, the
20 Federal judges in the District. It's in the manual; I guess
21 it's in terms of recusal. But that is the rule, because for
22 obvious reasons, it's inadvisable for a United States attorney
23 to investigate and get into an adversarial situation with a
24 judge before whom he will be appearing in the future,
25 particularly if the investigation doesn't result in a

1 prosecution.

2 Q But what about situations in which there's not a
3 refusal? In other words, I'm just saying generically, is
4 there a trial capability and an investigative prosecution
5 capability in the Criminal Division that is used on cases in
6 which a U.S. attorney's office is not recused but may not have
7 the resources?

8 A You're confusing me with the terms.

9 Q I'm sorry.

10 A There are such situations where the United States
11 attorney will ask the Department to come in.

12 Q Okay.

13 A And he may just turn the case over to the
14 Department, or he may just ask for assistance.

15 Q Okay. And in this particular instance, when
16 Ms. Casey -- when Ms. Casey's office was -- became recused
17 from this matter, it was assigned to the Fraud Section?

18 A Yes.

19 Q Why?

20 A I've been thinking about that as to why we assigned
21 it to the Fraud Section, and I think it came down to us
22 having -- we were influenced by the fact that it was a fraud
23 matter; ~~two, the fact that the~~ -- we had available a talented
24 trial lawyer in Don Mackay who could be put in charge of it.

25 Q I just want to -- I think, just very briefly, one

1 other thing. Yesterday, Mr. Clark showed you a document which
2 bears a Bates stamp number, 7128 A. It is attached -- it is
3 attached to a document that goes from 7129 to 7151, but I just
4 want to focus on the first page. It is a document that is a
5 Xerox of a document that you testified yesterday has a
6 yellow -- has a copy of a yellow sticky or a yellow Post-it on
7 top of a document that you know from your experience says
8 underneath, limited official use?

9 A Yes.

10 Q And you described this, I believe, as a
11 nonclassified cover sheet?

12 A That's right.

13 Q Can you explain what that means?

14 A Nonclassified cover sheet for a sensitive matter.

15 Q Okay. And by classified, there are -- is it fair to
16 say that there are procedures for documents that have to be
17 classified for national security reasons?

18 A There are.

19 Q And those, we are generally familiar are secret and
20 top secret?

21 A And confidential.

22 Q And confidential. And in certain instances, why
23 does the Department use this document called limited official
24 use? I mean, what does it mean?

25 A Well, it's used because you can't use security

1 classifications. It's an improper use of security
2 classifications if it doesn't involve a national security
3 matter and doesn't warrant classification as such, but
4 nonetheless the material is of a sensitive nature and the
5 limited official use cover suggests that it should be handled
6 in a careful manner, more carefully than the usual manner.

7 Q Can you -- without giving away the secrets of the
8 Department, can you share your experience about the
9 consistency with which limited official use cover sheets are
10 employed?

11 A Well, they have become fairly consistent now with
12 this Attorney General. She gets a little upset if she finds a
13 very sensitive document floating around without a cover sheet
14 on it. Prior to that, it was not a uniform practice.

15 Q Some people put them on and some people didn't?

16 A Some people didn't.

17 Q And unlike a classified document, there is no
18 sanction?

19 A There is no sanction.

20 Q If a classified document doesn't have the right
21 cover sheet, it's a violation of procedures?

22 A Right.

23 Mr. Fishman. I think that's all I have.

24 The Witness. Anybody else?

25 Mr. Clark. I do have a very -- I think it's going to be

1 very brief follow-up, if I could take about half an hour, I
2 think. That's a contradiction in terms.

3 EXAMINATION BY MR. CLARK:

4 Q Mr. Keeney, one of the things that you mentioned was
5 that one of the factors in a prosecution is the state of the
6 docket in a particular district.

7 Now, after FIRREA, the Financial Institution Recovery and
8 Reform Enforcement Act or something like that was passed in
9 1988, isn't it true that the Department of Justice placed some
10 emphasis on financial institution fraud cases?

11 A Ye-.

12 Q And isn't it also true that the Department even
13 established a category called major cases?

14 A I think that's true, yes.

15 Q Okay. Are you personally aware of the factors that
16 were used by the Department and are still in use by the
17 Department as to what constitutes a major financial
18 institution fraud case?

19 A I don't know that I'm familiar with the specifics,
20 no.

21 Q Okay. I believe that you said a little bit earlier
22 that your understanding was Mark MacDougall, the trial
23 attorney, purported to take all of these factors into
24 consideration when he prepared his February 23rd memorandum.

25 Now, just so I'm clear, you didn't read that memorandum?

1 A I don't think I did, no.

2 Q Okay. Is there any other basis for your answer that
3 you understand he took -- he purportedly took these factors
4 into consideration? Did you have a conversation with any
5 other employee in the Department? That's just looking at the
6 document --

7 A Looking at the document after the fact.

8 Q Also, again, so I'm clear, were you involved
9 personally in the selection of the three attorneys from the
10 Fraud Section who took over the matter?

11 A I was involved in the selection of Mackay. I don't
12 recall -- I don't know the other two people, so my
13 contribution in that regard was not significant.

14 Q Okay. Now, it was decided that the matter should be
15 held or prosecuted by the Fraud Section?

16 A Right.

17 Q There is no Department policy that precludes the
18 joining of prosecutors from two different sections in a single
19 investigation, is there?

20 A There is not.

21 Q And would it be fair to say that in certain cases,
22 the presence of prosecutors from two different sections might
23 actually strengthen the investigation by providing
24 perspectives?

25 A It might.

1 Q And is it fair to say, since for a long time you had
2 some oversight over the Public Integrity Section, is it fair
3 to say that the Public Integrity Section has some very
4 difficult calls in investigations? And by that I mean --
5 well, I'll withdraw it.

6 In matters of public integrity, such as bribes, aren't
7 there many gray areas?

8 A Yes.

9 Q And by gray area, so that we are both on the same
10 wavelength, what I mean is areas where conduct, it's
11 questionable whether or not a criminal violation has
12 occurred.

13 A Yes.

14 Q So that these are people, generally, who are dealing
15 with very difficult factual situations; is that correct?

16 A True.

17 Q And because they have enforcement over the bribery
18 statutes, many times they are involved in financial matters
19 where there is the passage of money, and they have to make
20 determinations whether or not there's a gratuity or a quid pro
21 quo?

22 A If the passage of money is to a Federal official,
23 yes.

24 Q Okay. Well, the experience that they would get in
25 prosecuting Federal offenses certainly might have some

1 relevance to ~~examination of~~ conduct that might violate Federal
2 statutes and also violate State bribery laws; wouldn't that be
3 fair to say?

4 A Yes.

5 Q Okay. Was there any -- to your knowledge, was there
6 any significant disagreement as to whether anyone from the
7 Public Integrity Section should be included in the trial
8 team?

9 A I'm assuming it was discussed, but the decision was
10 made to go with the fraud team.

11 Q Okay. Do you know -- I just don't like the passive
12 voice. Do you know who made the final decision as far as the
13 constitution of the team?

14 A Mrs. Harris. She would have been on board then.

15 Q And I didn't mean that comment as a criticism; I
16 meant me personally, I don't like the use of passive voice.

17 You were answering questions by Mr. Fishman about career
18 people as opposed to political appointees?

19 A Uh-huh.

20 Q Just generally speaking, though, isn't it fair to
21 say that a career person could make certain decisions in order
22 to advance their career?

23 Mr. Fishman. Are you speaking specifically about
24 Mr. Keeney, or are you speaking about, generally, as a
25 proposition of human nature?

1 BY MR. CLARK:

2 Q As a proposition of human nature. I mean no
3 disrespect.

4 A As a matter of human nature, it's possible, but if
5 that happened in the Criminal Division, that person's career
6 would be severely interfered with.

7 Q Okay. But it is possible?

8 A It's possible, sure.

9 Q Career people aren't automatons?

10 A They are no different from other human beings.

11 Q Your discussions with Michael Johnson in Little Rock
12 on September 20th, 1993, you discussed to some extent the
13 dealings of the Little Rock U.S. attorney's office with Randy
14 Coleman, Mr. Hale's lawyer, I will represent and it's a fact
15 that Mr. Hale was indicted on September 23rd, which was only
16 three days afterwards. Mr. Coleman, according to his
17 correspondence, only gave notice of his appearance about the
18 beginning of August.

19 Were you aware when you had these discussions on
20 September 20th, first, that the U.S. attorney was intending to
21 indict Mr. Hale or present the case to the grand jury for a
22 vote on indictment?

23 A I assume I was, yes.

24 Q Do you recall if you were aware that Mr. Coleman was
25 asking them to delay that process for some period of time?

1 A I think I was aware of that, yes.

2 Q Did you give any advice on that issue?

3 A Well, the advice -- we got into this the advice I
4 have given with respect to a proffer and so forth. The
5 proffer was not forthcoming, and I didn't see any reason for
6 delaying the indictment. Our concern was not whether he was
7 indicted immediately; our concern was that no deal be made
8 with him without the government's interest being protected.
9 So his indictment didn't interfere with that.

10 Q Certainly as a prosecutor, you wouldn't want, to use
11 a colloquialism, "take a pig in a poke."

12 A Well, that's exactly what we refused to take.

13 Let me go back to something you raised there. I thought
14 you were going to ask this question, but you didn't --

15 Q Well, I'm not finished, but go ahead.

16 A I'll do it when you are finished.

17 Q I'll tell you, so you don't lose your thought, why
18 don't you?

19 A Well, you were going around the circle as to
20 whether -- why we didn't have the Public Integrity Section as
21 part of the process. One of the reasons was that I supervise
22 the Public Integrity Section. I was going to have the lead
23 responsibility with respect to this matter, and I'm acutely
24 aware of independent counsel matters and other matters that
25 the Public Integrity Section is involved in.

1 The fact that they were not on the team immediately did
2 not mean that we didn't have in mind putting them in at any
3 point when it was indicated that there was a corruption
4 violation that would come within their jurisdiction or they
5 could be helpful with.

6 Q I appreciate the information. Would it be fair to
7 say, though, that there might be a case where their inclusion
8 at the very beginning -- well, let me withdraw it.

9 You were supervising the matter, but certainly you aren't
10 going to pour over the thousands of documents that Don Mackay
11 and the others were going to go over?

12 A That's true.

13 Q So it is conceivable that the presence of someone
14 from the Public Integrity Section at the very beginning by one
15 of the attorneys who would go through all of these
16 transactions that involved prominent elected officials in
17 Arkansas might have a positive benefit?

18 A It might, but it's not likely to have a positive
19 benefit that we wouldn't have become aware of almost
20 immediately, because Mackay is an experienced prosecutor and
21 at that time, the primary focus was on fraud matters. If --
22 as I said, if we had any indication of substantial corruption,
23 we would have put somebody from Public Integrity in
24 immediately.

25 Q Okay. Mr. Fishman showed you some of your telephone

1 logs, particularly -- at least one showing a conversation with
2 U.S. Attorney Banks. Are there any documents that the
3 Department might have that you could provide to Mr. Fishman to
4 illuminate the matter that you were speaking about with him at
5 that time?

6 A I don't know of any, no. The conversations with him
7 were -- I had two or three conversations with him, and they
8 were with respect to discrete, separate matters. And I don't
9 know of any recordation of conversation other than what might
10 be in my notes and those have been produced.

11 Q Okay. I'll just state for the record that those
12 three pages are the only pages that have been produced to the
13 committee regarding contacts with Mr. Banks in either 1992 or
14 1993.

15 Mr. Clark. I would just ask Mr. Fishman maybe to check
16 it again.

17 Mr. Fishman. I'd be happy to do that. I am not sure
18 that we were asked to look for Mr. Keeney's notes related to
19 all contacts with Mr. Banks I could be wrong. But we will
20 check.

21 Mr. Clark. Let's not debate.

22 The Witness. Let me clarify, we went through that with
23 regard to the idea of any contacts with Arkansas.

24 BY MR. CLARK:

25 ~~Q Okay. Just to clarify quickly one point. I went~~

1 through, to some extent, the particulars of your telephone
2 calls on September 20th of 1993, and I just want to return to
3 that fairly quickly, so I'm going to show you a few
4 documents. Some we've seen before, but I'm going to give you
5 two more that we haven't seen at this point. One second.

6 I'm actually going to show you three documents we haven't
7 seen before and I will identify them for the record.

8 A000264 is a page that is represented by the Department
9 to be your telephone logs; the date is Friday, September 17th,
10 1993.

11 The second document is single-page Bates stamped A000448,
12 which the Department has produced, which is purported to be
13 calls from the phone numbers in the office of the Associate
14 Attorney General to all other department numbers during
15 Mr. Hubbell's tenure.

16 And the third is a document, GRO000718, which is a
17 photocopy of telephone message slips of Mr. Hubbell.

18 And I just want to do this to clarify this. What you
19 will see is that on 000448, Mr. Hubbell's calls to other
20 people in the Department, there's a record that on 9-17-93,
21 which is a Friday afternoon at 16:57:30, which I interpret to
22 be 4:57:03 p.m. on Friday afternoon, so just before 5:00 p.m.,
23 he placed a call to 514-2621, which would be your number. Is
24 that correct?

25 A Sure.

1 Q Okay. And then, Mr. Hubbell received a message from
2 you, according to GRO00718, Mr. Keeney returned your call --
3 meaning Mr. Hubbell -- please call; and it's indicated that's
4 at 6:00 p.m. So about an hour after you got the call from
5 Mr. Hubbell, you called him back. So what we have on your
6 telephone logs, 5 o'clock, you get a call that's in the "in"
7 column so, that indicates that it's in from Mr. Hubbell; 5:55
8 "out," indicating that you placed the call back. Okay?

9 A With the WCB.

10 Q Will call back, which in this case refers to both of
11 you. And this same sheet of the calls from Mr. Hubbell's
12 office, again 000448, indicates that on the following Monday,
13 the 20th, at about 9:11:23, Mr. Hubbell placed another call to
14 your office, and again on A 000265, that's reflected by the
15 fact that at 9:10 there is an entry on the "in" column -- the
16 difference in the times, I think, is just due to the universal
17 fact that no two clocks keep the same time -- and then also on
18 Mr. Hubbell's outgoing calls, 9-20-93, 13:48, which would be
19 1:48, it indicates again a call to you. And that's reflected
20 again in the "in" column, there's a call at 1:50. Okay. So I
21 think we have figured this out, sort of.

22 Mr. Fishman. Looks like a massive game of telephone
23 tag.

24 Mr. Clark. Yeah. Yeah.

25 The Witness. With, again, the WCB.

1 Mr. Fishman. Right.

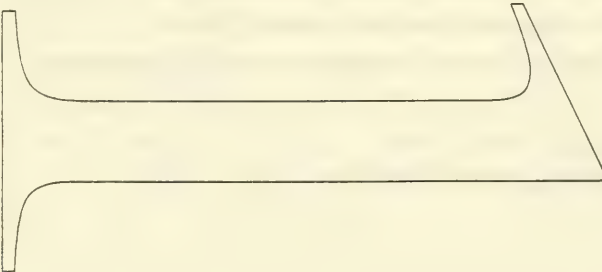
2 Mr. Clark. Absolutely.

3 BY MR. CLARK:

4 Q So then, having had the night to consider this, I
5 just -- and you having mentioned before that there were only a
6 couple of matters that you really had involvement with
7 Mr. Hubbell, do you have any recollection of what you
8 apparently spoke to Mr. Hubbell about when you spoke to him at
9 2 o'clock on Monday, September 20th, and then again when you
10 apparently spoke to him at 3:05 p.m. that day?

11 Mr. Fishman. Let me -- I have to insert only one mild
12 objection to that.

13 It is not clear at all that he spoke with him at 2
14 o'clock from the call letter. It may well be that they
15 ultimately did not connect until later than that. I think we
16 can tell from the record. If you're asking whether they did
17 or not, that's fine.



1 RPTS GOETTLICH

2 DCMN WEINSTEIN

3 Q Well, what it appears to me from the record is that
4 when there are multiple call backs, they are placed in a
5 single line across, which is the reason that the top space has
6 four entries, a total of four entries in the two columns. It
7 does have a checkmark for completed in the 3:05 p.m. entry,
8 which is a separate entry, is marked completed. Now, you did
9 read that one entry from your notes about there being
10 something outside the A.G.'s office?

11 A That was a personnel matter.

12 Q That was a personnel matter, okay.

13 A I had had several conversations with him with
14 respect to that.

15 Q Okay. The other matters that you referred to.
16 Ford prosecution, that was earlier in 1993, right?

17 A That was earlier. It was while -- before Mrs. Reno.

18 Q Okay. And then I mentioned yesterday that
19 Durenberger matter?

20 A Yeah.

21 Q You had some involvement with him on that. But
22 again, that was like in February and March of 1993?

23 A Yeah.

24 Q And then you said there was one other matter?

25 A I might have had contact with them on the

1 Durenberger matter after that because the Durenberger matter
2 went on forever and ever. It was just disposed of last month.

3 Q And then you mentioned a possible violation by
4 someone in the department as a matter that -- was that
5 something you were communicating with him in September of '93
6 or was it earlier?

7 A I don't know exactly when it was, but he called me
8 up and presented me with the factual situation that had been
9 brought to his attention.

10 Q Now, the telephone log indicates, of course, that
11 you did speak to Ms. Casey on the 20th. Particularly there is
12 an entry that shows at 2:25 p.m. you had a conversation with
13 her and what I would like you to do is, in Mr. Gangloff's
14 notes, if you turn to page 00748, it appears that -- well, it
15 is stated that a number of things have been redacted from this
16 page, but at the very bottom of the center, and it is starred,
17 it appears. It appears to read to me, Casey will think about
18 it.

19 Is that your recollection of her initial reaction when
20 you discussed whether she should recuse?

21 A Well, at one point she did say something like that,
22 whether it was the termination statement or what it was. She
23 did say she would think about it. She didn't rule it out.

24 Q Okay. I mean, it wouldn't be unusual for somebody
25 who speaks to another person for the first time and is asked

1 to do something to say, well, I will take it under advisement,
2 I will consider it.

3 A (Nodding in the affirmative.)

4 Q Okay. One of the documents that has been produced
5 by the department, actually from the Bureau, indicates that on
6 October 5th, the director, director Freeh, opined that
7 Ms. Casey should recuse herself from the matter.

8 A October 5th, what?

9 Q Of 1993. I have got the --

10 A Was Freeh the director then?

11 Q I believe in the summer of 1993.

12 Mr. Fishman. Freeh was -- I will stipulate for the
13 record that Freeh was announced as the Director of the -- was
14 announced as the Director of the FBI in July of 1993. I don't
15 know whether -- I don't know when he was confirmed but --

16 Mr. Clark. It is not significant.

17 BY MR. CLARK:

18 Q I will just show you FBI 0001235. It is dated
19 October 12th, 1993. It is a report to Director Freeh, so
20 certainly at about that time.

21 A Okay.

22 Q And here it's FBI 0001322. There were four zeroes,
23 I hope I didn't miss one. "10/5/93, briefed Director on case,
24 part of FCS briefings, my case is financial crimes section
25 briefing. In any event, Director indicated he wanted USA to

1 recuse."

2 Was that information ever conveyed to you?

3 A I don't know.

4 Q In any event, once you got involved in the matter at
5 the end of September, did you have any discussions with anyone
6 at the FBI about the need to keep their involvement in the
7 Hale and Madison investigations confidential from Mr. Hubble?

8 A I don't think so.

9 Q Do you know whether anyone at the department
10 informed the Bureau that Mr. Hubble had recused himself?

11 A He did a memorandum, which I think you have. I
12 don't know how widely that was disseminated.

13 Q As regards Gerald McDowell and Joe Gangloff, is
14 there one other person upon whom you reposed for confidences
15 in?

16 A Well, I think very highly of both, but McDowell is a
17 more senior person. I have worked with him for a number of
18 years. He is chief of -- they are both talented people. I
19 have confidence in both.

20 Q But Mr. McDowell is a person who you have had more
21 direct contact with over the years?

22 A That's right. That's right.

23 Q Approximately what period of time would you say it
24 covers?

25 A Well, he came in the Department in I think about '66

1 or '67 in the Organized Crime Section, and during that period,
2 I was a deputy in the Organized Crime Section. I had limited
3 contact with him and then he went out in the field in
4 St. Louis and Boston and so forth. My contact was limited
5 with him.

6 My contact with him became more substantial when he came
7 back, maybe '78, maybe '79, and was the Deputy Chief in the
8 Organized Crime Section. Then in '79, I believe he became
9 Chief of the Public Integrity Section and thereafter, I had
10 close and continuing contact with him.

11 Q Okay. And your contacts with Mr. Gangloff were of a
12 more limited personal nature?

13 A We are talking about professional, right?

14 Q Professional, sure.

15 A You said personal.

16 Q Well, I mean your personal dealings in the course
17 of --

18 A Personal dealings, all right. Yeah, because
19 Gangloff was down the line. McDowell was a section chief from
20 '79, I think, on. Gangloff came in the section some time
21 thereafter as a specialist on conflict of interest. I agreed
22 to a contact with him. He testified with me a number of times
23 up here on the Hill, but his was a limited area. He became
24 one of the leaders of the section as a deputy chief within the
25 last four or five years.

1 Q One of the things I noticed was that the FBI
2 teletyped from Little Rock in October of 1992. You testified
3 yesterday it was your handwriting, Mr. McDowell's name. You
4 apparently passed it on to Mr. McDowell?

5 A Yeah.

6 Q At that point he was Chief of the Fraud Section,
7 correct?

8 A Yes, sir.

9 Q And you did not -- or did you direct it to the
10 attention of the Public Integrity Section Chief at that time?

11 A Apparently not.

12 Q Were you aware in June of 1993 that Doug Frazier
13 reported to the Executive Office for U.S. Attorneys that he
14 had never gotten your memo and Mark MacDougall's February
15 memo?

16 A If I became aware of it, I became aware of it
17 recently. I wasn't aware of it at the time.

18 Q At the time nobody asked you --

19 A No.

20 Q -- to see -- and there was no sort -- to your
21 knowledge, there was no internal inquiry within the Department
22 to determine what had happened to the transmittal of the
23 memorandum?

24 Mr. Fishman. At what point? What do you mean by an
25 internal inquiry?

1 Mr. Clark. I will rephrase it.

2 By Mr. Clark.

3 Q When it was discovered in June of 1993 that this
4 memorandum from the middle of March of 1993 had not been seen
5 by Mr. Frazier, at about that time, to your knowledge, did
6 anyone within the Department conduct any sort of review
7 process to determine what had become of the document?

8 A Let me correct myself. I don't think I was aware of
9 the fact that he had received the document.

10 Q Okay. So to your knowledge, nobody even inquired of
11 you at any point?

12 A I don't recall --

13 Q In 1993.

14 A I don't recall.

15 Mr. Fishman. Inquired of him as to what?

16 Mr. Clark. As to the transmittal of the document from
17 his office to Mr. Frazier's office. Does your answer stand,
18 Mr. Keeney?

19 A My answer is that I do not think I was aware of the
20 fact that he didn't receive the communication.

21 Q Let me show you 551, and the Bates numbers are cut
22 off. It appears to be 001985, but in any event, the top page
23 is entitled, "Department of Justice, Executive Secretariat
24 Control Data Sheet", and it's attached to -- I have an extra
25 copy if you want it.

1 A ~~That would be great.~~ If you have extra copies of
2 everything you showed him today, that would be great so we can
3 keep them in order.

4 Q And it is attached to a copy of Mr. Frazier's
5 memorandum to you dated February 18th and it appears to me
6 that that is a consecutively numbered page. Whether these
7 were attached then, I can't represent, but they were presented
8 to us as being consecutively produced. My question is, would
9 it be typical within the Department for a cover sheet of this
10 type, meaning the Executive Secretariat Control Data Sheet, to
11 be attached to a memorandum such as Mr. Frazier's when it was
12 sent to you?

13 A Yeah.

14 Q Okay, and the purpose of this document -- what is
15 your understanding of the purpose of this document?

16 A That gives them the control. They follow through on
17 the correspondence. That is their responsibility.

18 Q Okay. So this should have been attached or
19 something similar to this should have been attached to your
20 March 19th memo, the one in your name that Mr. Urgenson sent
21 out; is that correct?

22 A If in fact it was controlled correspondence, the
23 answer is yes.

24 Q Well, if it came into your office with a sheet such
25 as this, would you anticipate that it would go out of your

1 office with a sheet like this?

2 A I would.

3 Q Now, regarding the underlying document and
4 documents, one thing -- we discussed some Mr. Banks' letter of
5 January 27, and again, this is part of the same group of
6 documents. I will refer to the easiest Bates stamped numbers
7 to read, GAC 001416 and 001417. It is part of that same
8 document. It is one of the attachments.

9 Mr. Fishman. This is the letter to Ms. Henneman from
10 Mr. Banks?

11 Mr. Clark. Yes, January 27th, 1993.

12 By Mr. Clark.

13 Q Now, in the top paragraph on page 2, Mr. Banks
14 writes, "I believe this office has a conflict of interest in
15 conducting an investigation for presenting an indictment
16 against these individuals. ~~Previous prosecution of~~
17 Mr. MacDougall and two other defendants resulted in a not
18 guilty verdict. Several allegations suggesting political
19 prosecutions were made during the trial. They were patently
20 false, but a second investigation, slash, prosecution could
21 easily give the appearance of inappropriate motivation by this
22 office, period."

23 So would you agree that Mr. Banks is saying that he would
24 not want to be perceived as targeting Mr. MacDougall?

25 A Yes.

1 Q Now, in the next paragraph, the last paragraph, he
2 says he has resigned effective March 1st of 1993. Now,
3 wouldn't the perception problem regarding a new prosecution of
4 MacDougall go away if Mr. Banks was no longer U.S. attorney?

5 A It would go away in Mr. Banks' view.

6 Q So wouldn't it have been just as easy when you got
7 the memo on February 19th of 1993 to just hold it for nine or
8 ten days and then allow the new U.S. attorney to take a new
9 look at the matter?

10 A Did she come in in nine or ten days? An acting U.S.
11 attorney?

12 Q Yes.

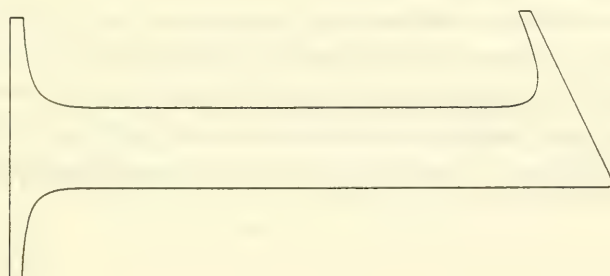
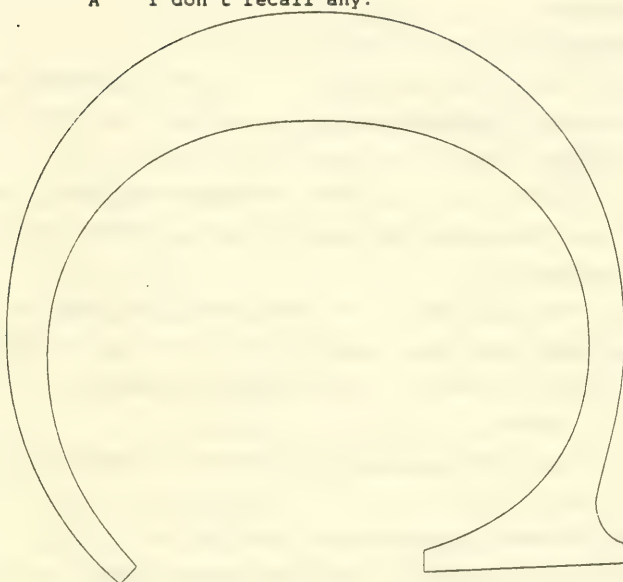
13 A That would be one way to handle it, yeah.

14 Q I mean, did you give some consideration to that in
15 1993 or you just passed it along?

16 A Well, at the time we were dealing with Banks and we
17 just concluded that Banks' stated reason for recusal was not
18 appropriate. I mean, United States attorneys get criticized
19 for bringing cases, particularly if they get a hung jury or
20 something and he was a little bit sensitive to that and the
21 conclusion was that that was not a basis for recusal.

22 Q By the way, there is a memorandum concerning the
23 prosecutive merit of the criminal referral. Is there any
24 memorandum to your knowledge concerning or discussing the
25 recusal issue that's separate from that document?

A I don't recall any.



1 RPTS GOETTLICH

2 DCMN MAGMER

3 Q Would it be normal practice for the Department to
4 prepare things like that or would it just be a person's voiced
5 opinion based on the --

6 A Wasn't there -- in this correspondence, wasn't it
7 stated that the Criminal Division didn't agree there was a
8 basis for recusal?

9 Q That would be on your March 19th -- the memo in your
10 name on March 19th. For example, 006676, there is a line in
11 there. However, there is not any sort of discussion --

12 A Analysis.

13 Q Yeah. To your knowledge, there is no analysis of
14 that issue?

15 A That's all there is to it, as far as I know.

16 Q Going back to Mr. Gangloff's notes, and we will go
17 to a page that Mr. Fishman just showed you, 007749. This
18 concerns the conference call with yourself, Mr. McDowell and
19 Irv Nathan, whom you have identified as being in the Deputy
20 Attorney General's Office.

21 One bit of information that we overlooked just briefly
22 ago was at the top left-hand side. It does indicate what
23 appears to be a date. So it looks like this happened later in
24 the day after your calls to Michael Johnson and to the meeting
25 that Irv Nathan attended in your office and your conversation

1 or conversations with Ms. Casey.

2 A Which? This was the list? Which is the later? I
3 don't understand.

4 Q This has 5:30, which I would interpret being p.m. I
5 hope you are not having meetings at 5:30 a.m., which is not
6 beyond the realm of possibility. In any event, one of the
7 things it says here on this page, "per DAJ via IN." So per
8 the Deputy Attorney General, Mr. Heymann, via Irv Nathan, "Let
9 them proceed on Hale."

10 Now, was it Mr. Heymann's position that at this point her
11 recusal was not required?

12 A It may well have been. I went into this before, but
13 our concern was not with the prosecution of Hale. Our concern
14 was with making a deal with Hale and that's what we wanted to
15 be fully apprised of. Whether they returned the indictment
16 against Hale was not a matter of ~~great import~~ at that point.

17 Q Moving forward to November 3rd, the fact that you
18 didn't attend the meeting in the Deputy Attorney General's
19 Office, do you recall the reason why you didn't attend?

20 A I don't, and it could have been for a variety of
21 reasons. I could have been called off on another crisis. You
22 know, there were a lot of people involved in the meeting. I
23 was not an essential party to that meeting. Everybody knew my
24 views, so if another crisis came up that I had to address it
25 made sense that I didn't attend it.

1 Q Okay. Let me show you 004650, and that's a message
2 slip. It's dated 11/2/93 at 1:00 o'clock. And that's
3 notifying Gerry McDowell that there is going to be a meeting.

4 A Right.

5 Q And it says October 4th. I believe that that's a --
6 just a mistake. That should be November 4th. Thursday would
7 be November 4th in the Deputy AG's Office concerning the
8 referrals.

9 A Uh-huh.

10 Q Okay. You wouldn't know of any reason why this
11 would be, other than the first notice to Mr. McDowell of this
12 meeting, do you?

13 A I don't understand your question.

14 Q Okay. Do you know if the meeting was noticed any
15 earlier than November 2nd at 1:00 o'clock?

16 A I have no idea.

17 Q Now, in your urgent report of October 28th, 002204
18 and 2205, I did not see any mention of your communications
19 with Ms. Casey in the period between September 20 and the end
20 of October. Now --

21 Mr. Fishman. Which documents?

22 Mr. Clark. 002204 and 002205.

23 BY MR. CLARK:

24 Q Now, isn't it accurate, Mr. Keeney, that you had one
25 or more conversations with Ms. Casey in which you told her

1 your opinion that she should recuse?

2 A I had one or more, but I don't know when the last
3 one was.

4 Q Okay. Well, if you didn't attend the November 3rd
5 meeting, were all your communications with Ms. Casey on that
6 subject before that date?

7 A I assume so since she recused herself immediately
8 after the November 3rd meeting.

9 Q Now, in the November 1st urgent report --

10 A Incidentally, if you have any indication that I did
11 attend that meeting with Paula Casey, I wish you'd show it to
12 me because I have no recollection of it. You keep coming back
13 to it. So I am wondering what the point of it is unless you
14 have something that indicates I was there.

15 Q Your November 1st urgent report, 007358 and 007359,
16 what I direct your attention to is the last paragraph on
17 007359, and particularly in there you write that we have
18 discussed -- let me make sure I have one other copy.

19 Mr. Fishman. Mr. Clark, didn't we go over this
20 yesterday?

21 BY MR. CLARK:

22 Q I just have a very few questions.

23 A You seem to be going back over the same thing,
24 Mr. Clark. I don't know whether you have a lot of time to
25 waste, but I don't.

1 Q This will be very brief. Let me read over your
2 shoulder.

3 Mr. Fishman. Just read it and ask your question.

4 BY MR. CLARK:

5 Q "We have discussed the Little Rock investigation with
6 the United States attorney and the first assistant United
7 States attorney in Little Rock. The United States attorney
8 has not requested our assistance in investigating or
9 prosecuting these matters to date."

10 Mr. Keeney, did you intentionally leave out of there the
11 fact that you had voiced the opinion to Ms. Casey that she
12 should recuse herself?

13 A Come on. We went through this ad nauseum
14 yesterday. I explained it. Come on, Mr. Clark. If you have
15 nothing else to do, fine. But I do. So I have answered those
16 questions. They are in the record, ~~and I think we have had~~
17 enough of it.

18 Q Did you intentionally avoid attending the
19 November 3rd meeting?

20 A I did not intentionally avoid attending that
21 meeting.

22 Q Did Deputy Attorney General Heymann know before
23 November 1st, 1993, that you were communicating to Ms. Casey
24 an opinion that he did not share on recusal?

25 Mr. Fishman. I'm sorry. Do you have a good-faith basis

1 for asking the question whether Mr. Heymann believed that she
2 should not recuse herself?

3 Mr. Clark. Sure. September 20th, he says, let them
4 proceed.

5 Mr. Fishman. On Hale.

6 Excuse me, Mr. Keeney. Perhaps you know more -- perhaps
7 you have talked to Mr. Gangloff or perhaps you have talked to
8 former Deputy Attorney General Heymann. I don't know whether
9 you have or not, but let them proceed on Hale. Mr. Keeney has
10 testified, it says, to indict. Doesn't say anything about
11 recusal. I believe he testified to that.

12 The Witness. Several times.

13 BY MR. CLARK:

14 Q Is the answer no then?

15 A Well, what's the question again?

16 Q The question is, Mr. Keeney, did you avoid that
17 meeting --

18 A The answer I gave you was, no, I didn't deliberately
19 avoid the meeting. I didn't go, to my recollection.

20 Your second question was that I was contrary to
21 Mr. Heymann's views on this subject? That's not true.

22 Q Mr. Heymann agreed with you on the recusal issue all
23 along?

24 A My understanding is he did. I don't recall
25 specifically discussing it with Heymann, but I discussed it

1 with Margolis, and I believe I probably discussed it with
2 Heymann.

3 Mr. Clark. I have nothing further.

4 Ms. Garcia. I have nothing further.

5 Mr. Fishman. I have to follow up, Mr. Keeney, I
6 apologize, because of some of the questions asked by
7 Mr. Clark.

8 BY MR. FISHMAN:

9 Q Let me first go back to this piece of paper, 4651,
10 which is the message to Mr. McDowell. Okay? You see that?

11 A Yes.

12 Q And you see, if I read it correctly, Mr. Clark
13 indicates that Thursday, October 4th, should be Thursday,
14 November 4th. You see that?

15 A Uh-huh.

16 Q And the message suggests, I believe, that the
17 meeting is supposed to take -- is scheduled for Thursday,
18 November 4th, at 4:15, correct? You see that?

19 A Uh-huh.

20 Q Okay. Now, your calendar reflects -- your
21 calendar --

22 Mr. Clark. Excuse me. Before we move on, just so the
23 record is clear, this document, or it may be two documents,
24 bears two different Bates stamp numbers, and I may have
25 referred to 004650. It has both 004650, 004651, just so the

1 record is clear.

2 Mr. Fishman. That's fine.

3 BY MR. FISHMAN:

4 Q Now, your calendar reflects, if I am correct, that
5 the meeting was moved to Wednesday, November 3rd, at 2:15.
6 You see that?

7 A Uh-huh.

8 Q Am I correctly reading the document that's marked
9 000167?

10 A Yes.

11 Q Now, a portion of your calendar for that day is
12 redacted; is that correct?

13 A Yes.

14 Q Can you see just to the left of the redaction --
15 first of all, the fact that the 2:15 is circled on your
16 calendar. Does that mean that is the time the meeting was
17 supposed to start?

18 A It does.

19 Q Now, just under the redacted sticker, can you see a
20 circle under what appears to be 1:30?

21 A Yes.

22 Q What does that suggest to you since this is your
23 calendar?

24 A That I had an appointment at 1:30.

25 Q Does the -- I know Mr. Clark doesn't know you at

1 all, but -- so for the benefit of the record, for Mr. Clark,
2 if you had a view --

3 Mr. Clark. I object to that comment.

4 Mr. Fishman. That's fine.

5 BY MR. FISHMAN:

6 Q If you had a view on Ms. Casey's recusal and you
7 knew that there was going to be a meeting about Ms. Casey's
8 recusal, would you have hesitated for a second to communicate
9 your view, either in advance, at or after the meeting to
10 Mr. Heymann, Mr. Nathan, Mr. Urgenson, Mr. Gangloff,
11 Mr. McDowell or anyone else who would have been at the
12 meeting?

13 A I would not.

14 Q And does your calendar reflect that Mr. Gangloff
15 was -- and Mr. McDowell were supposed to be at the meeting as
16 well?

17 A As well, yes.

18 Q I believe I am correct. It is Mr. Gangloff's
19 notebook that is the document that starts 7736 that is replete
20 with references to your believing that Ms. Casey should recuse
21 herself.

22 A That's right.

23 Q How long have you known Phil Heymann?

24 A Since about '78, since he was Attorney General.

25 Q How long have you been known Irv Nathan?

1 A About the same time.

2 Q Have you ever mislead Mr. Heymann or Mr. Nathan
3 about anything?

4 A No.

5 Q To clear up another question about Mr. Clark, let me
6 ask you if you knew that -- when Hale was going to be
7 indicted. Let me turn to page 7746 of Mr. Gangloff's notes,
8 and in the bottom third of the page, can you read for the
9 court reporter what it says there?

10 A Yeah. My question, JCK, when is indictment
11 planned?

12 Q And the answer, is it written there?

13 A Tuesday p.m.

14 Q Now, with respect to the exec sec -- and that is
15 short for executive secretary -- control sheet that Mr. Clark
16 asked you about, who in the Department of Justice actually
17 enters things on an exec sec control sheet?

18 A Exec sec, I suppose.

19 Q So is it fair to say that unless the document gets
20 sent through exec sec to the next person they do not update
21 the control sheet?

22 A Yeah. It would have to go through.

23 Q So, for example, the memo from Mr. -- from you to
24 Mr. Frazier, which was signed by Mr. Urgenson, obviously was
25 never sent to exec sec; is that correct?

1 A I don't know. I don't know what happened to it. I
2 can't -- I have no idea.

3 Q Would you personally do any of those things?

4 A No.

5 Q If you signed the memo yourself, what would you do
6 with it?

7 A Give it to my secretary, and she would run it
8 through exec sec.

9 Q And the last thing, Mr. Clark asked you about the
10 fraud and public corruption experience of the people who were
11 sent to Kansas City to take over this case.

12 Mr. Clark. That went to Little Rock.

13 Mr. Fishman. I am sorry. To Little Rock to take over
14 this case.

15 The Witness. He did, yes.

16 BY MR. FISHMAN:

17 Q Who was the -- the immediate supervisors of this
18 team were who?

19 A Were McDowell.

20 Q And who was below McDowell? Who was Mr. McDowell's
21 deputy in the fraud section?

22 A It would have had to have been Carver.

23 Q And Carver is Alan Carver?

24 A That is Alan Carter, right.

25 Q Now, Mr. McDowell was the chief of the fraud section

1 at the time, correct?

2 A Yes.

3 Q And Mr. Carver was his deputy chief or one of his
4 deputy chiefs; is that correct?

5 A That's right.

6 Q How long had Mr. McDowell been the chief of the
7 fraud section?

8 A At that time, maybe a year, year-and-a-half,
9 something like that.

10 Q And he was made the chief of this high priority area
11 by whom?

12 A Bob Mueller.

13 Q Before he took over the fraud section, what did
14 Mr. McDowell do?

15 A He was chief of the public integrity section for 13
16 or 14 years.

17 Q So did he have the kind of experience that Mr. Clark
18 was talking about?

19 A He certainly did.

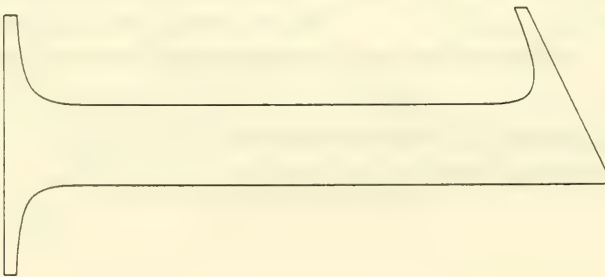
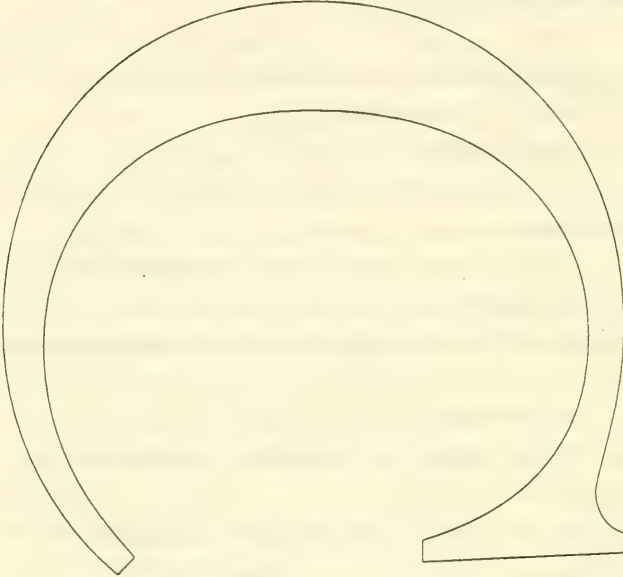
20 Q And where was Mr. Carver before he went to the fraud
21 section?

22 A He was in the public integrity section for a number
23 of years.

24 Mr. Fishman. I have nothing else.

25 Mr. Clark. Thank you for your time.

[Whereupon, at 4:43 p.m., the deposition was concluded.]



**KEENEY EXHIBIT 3, WAS NOT PROVIDED
IN TIME FOR PUBLICATION**

U.S. Department of Justice
Criminal Division

Washington, D.C. 20530

TOX: 10/9/92

Let's discuss
of the year have
read.

EW

...007151

cc

KSS

Mcdowd.

DEPARTMENT OF JUSTICE
EXECUTIVE SECRETARIAT CONTROL DATA SHEET

From: McWHORTER, LAURENCE S., DIRECTOR, EOA

To: AG., DAG, ASG

Date Received: 10-07-92

Date Due: NONE

ODD: NONE

Control #: X 9210071475:

Subject & Date

10-07-92 "SENSITIVE" MEMO ATTACHING A COPY OF A REFERRAL RECEIVED BY THE
U.S. ATTORNEY'S OFFICE FOR THE EASTERN DISTRICT OF ARKANSAS FROM THE
RESOLUTION TRUST CORPORATION CONCERNING APPARENT CRIMINAL ACTIVITIES
INVOLVING A SAVINGS AND LOAN ASSOCIATION.

Referred To: Date:
(1) OAG, 10-07-92
(2)
(3)
(4)

Referred To: Date:
(5)
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W/IN:

PRTY:

OPR:

E-Z

INTERIM BY:
Sig. For: NONE

DATE:
Date Released:

Remarks

CC INDICATED FOR CRM, OPC.
INFO CC: ODAG (RAPHAELSON)
(1) FOR INFORMATION.

LIMITED DISTRIBUTION.

Other Remarks:

OLA CONTACT:

FILE:

REMOVE THIS CONTROL SHEET PRIOR TO FILING AND DISPOSE OF APPROPRIATELY

Memorandum

Subject

Referral from the Resolution
Trust Corporation

Date

OCT 17 1992

To

William P. Barr
Attorney GeneralGeorge J. Terwilliger, III
Deputy Attorney GeneralWayne A. Budd
Associate Attorney General

From

Laurence S. McWhorter
Director
Executive Office for
United States AttorneysDesignation: Criminal MatterSecurity Classification: SensitiveOriginating Unit: Office of the United States Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203Clarification and Follow-up: Mac Dodson
First Assistant U.S. Attorney
Eastern District of Arkansas
Little Rock, Arkansas 72203
FTS: (501) 324-5263Attorneys in Main Justice Familiar with the Matter: none

Synopsis: Attached is a copy of a referral received by the United States Attorney's office for the Eastern District of Arkansas from the Resolution Trust Corporation concerning apparent criminal activities involving Madison Guaranty Savings & Loan. It is the belief of the United States Attorney's office that further investigation into this matter is warranted. This matter is being brought to your attention because Governor Bill Clinton and his wife Hillary Clinton are listed as witnesses who may have information regarding the suspected criminal activities.

Attachmentcc: Robert S. Mueller, III
Assistant Attorney General
Criminal DivisionPaul McNulty, Director
Office of Policy &
Communications



LI

_007128 A

Madison Guaranty

S & L.

Urgent Report -- Sully

USE

The attached information must be protected and not released to unauthorized individuals. Use of this cover sheet is in accordance with the Department of Justice regulation on the control of Limited Official Use information.



Resolution Trust Corporation
Kansas City Consolidated Office
4900 Main Street, P.O. Box 419570
Kansas City, Missouri 64141 (816) 531-2212 (800) 365-3342

September 1, 1992

RECEIVED

SEP 3 1992

U.S. ATTORNEYS OFFICE
LITTLE ROCK, ARKANSAS

The Honorable Charles A. Banks
United States Attorney
Eastern District of Arkansas
U.S. Post Office and Courts Building
600 W. Capitol, Room 331
P.O. Box 1229
Little Rock, Arkansas 72203

Re: #7236 Madison Guaranty Savings & Loan
Little Rock, Arkansas - In Receivership (11/29/90)
CRIMINAL REFERRAL NUMBER C0004

Dear Sir:

Certain matters have come to our attention which may constitute criminal offenses under Federal law. Enclosed is a report of an Apparent Criminal Irregularity.

Information in this referral may have been derived from financial records of customers of federally insured financial institutions. I hereby certify that (A) there is reason to believe that these records may be relevant to a violation of Federal criminal law, and (B) the records were obtained in the exercise of the RTC's supervisory or regulatory functions.

Due to the extensive nature of the exhibits relating to this referral, they are being sent to your office under separate cover.

Please direct any inquiries to the Investigator identified on the referral form, or to Lee O. Ansen, Department Head/Criminal Investigations, Kansas City Consolidated Office.

Sincerely,

A handwritten signature in cursive script, reading "L. Richard Iorio", is written over a horizontal line.

L. Richard Iorio
Field Investigations Officer

Enclosure

RTC
Resolution Trust Corporation

730 - Kansas City Consolidated Office

CRIMINAL REFERRAL FORM

CRIMINAL REFERRAL # C0004

1. NAME AND LOCATION OF FINANCIAL INSTITUTION

Name/ #: MADISON GUARANTY SAVINGS & LOAN
Location: 16TH AND MAIN, P.O. BOX 1583
(Street/City/State/Zip) LITTLE ROCK, ARKANSAS 72206

CERTIFICATE NUMBER:

If activity occurred at branch office(s), please identify:

2. ASSET SIZE OF FINANCIAL INSTITUTION: \$118,855,000

3. APPROXIMATE DATE AND DOLLAR AMOUNT (PRIOR TO ANY ALLOWANCE FOR RESTITUTION OR RECOVERY) OF SUSPECTED VIOLATION:

Date: (Month/Day/Year) Time frame between 12/84 and 5/85

Amount: Estimated at \$350,000 to \$1,000,000

4. SUMMARY CHARACTERIZATION OF THE SUSPECTED VIOLATION. Check appropriate box(es)

<input type="checkbox"/> Defalcation/Embezzlement	<input type="checkbox"/> Breach of Fiduciary Duty	<input checked="" type="checkbox"/> Check Fraud	<input type="checkbox"/> Other Bank Fraud
<input type="checkbox"/> False Statements	<input checked="" type="checkbox"/> Misappropriation of Assets	<input type="checkbox"/> Check Cash Fraud	<input type="checkbox"/> Forgery
<input checked="" type="checkbox"/> Check Cashing	<input type="checkbox"/> Antisocial Disappearance	<input type="checkbox"/> Money Laundering	<input type="checkbox"/> Other

Applicable Section(s) of the U.S. Code:

<input type="checkbox"/> 18 USC 1343	Banking & Finance	<input type="checkbox"/> 18 USC 1343	Banking & Finance
<input type="checkbox"/> 18 USC 1344	Depository Institutions	<input type="checkbox"/> 18 USC 1344	Banking & Finance
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OCT 6 '92 15:48 FROM US ATTORNEYS OFFICE

PAGE.004

MADISON GUARANTY SAVINGS & LOAN
CRIMINAL REFERRAL 00001
AUGUST 31, 1992
PAGE 2

5. THIS MATTER IS BEING REFERRED TO:

FBI, Little Rock, Arkansas
U.S. Attorney, Eastern District, Little Rock, Arkansas

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME: (First/MI/Last) McDougal, James E.
ADDRESS: (Street/City/State/Zip) Current Address Unknown
DATE OF BIRTH: (Month/Day/Year) Unknown
SOCIAL SECURITY NO: Unknown

b. Relationship to the financial institution: (Check all applicable blocks)

<input checked="" type="checkbox"/>	Owner	<input type="checkbox"/>	Employee	<input type="checkbox"/>	Director	<input checked="" type="checkbox"/>	Shareholder	<input type="checkbox"/>	Appraiser
<input checked="" type="checkbox"/>	Officer	<input type="checkbox"/>	Agent	<input checked="" type="checkbox"/>	Adviser	<input checked="" type="checkbox"/>	Attorney-in-Fact	<input checked="" type="checkbox"/>	General Agent

c. Is person still affiliated with the financial institution:
☐ Yes ☒ NoIf No, terminated ☐, resigned ☒. Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

McDougal resigned from the Board of Directors in December 1985; however he remained active in the Association's day to day business. He was removed from the Association when it was placed in Conservatorship by the RTC in 2/89.

d. Prior or related referrals:
☒ Yes ☐ No

If Yes, please identify.

McDougal was indicted, tried and acquitted in 1989 on charges stemming from his activities at Madison Guaranty Savings & Loan.

e. Is person affiliated with any other financial institution:
☒ Yes ☐ Noor business enterprise:
☒ Yes ☐ No

If yes to either or both, please identify.

McDougal was a shareholder and Board Member of the Bank of Kingston, which was at one point to be merged with Madison Guaranty; thrift records indicate that the merger was called off due to legal ramifications.

McDougal is a principal in the following business enterprises:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembroke Manor, Inc.	Molling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal

6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

SOCIAL SECURITY NO: Unknown

	Water		Phosphorus		Chlorine	X	Carbon Dioxide		Hydrogen
X	Sulfur		Silver	X	Selenium	X	Hydrogen Sulfide		Oxygen

Yes X No

Describe circumstances: (If necessary, use continuation sheet)

Susan McDougal resigned from the Board of Directors in December 1985, but remained active in the day to day activities of the association's subsidiary operations.

____ Yes X No

If Yes, please identify.

Yes No Unknown at this time

or business enterprises.

X Yes No

If yes to either or both, please identify.

Susan McDougal is a principal in the following business enterprises:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembroke Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

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6. PERSON(S) SUSPECTED OF CRIMINAL VIOLATION: Complete subparagraphs (a) through (e) on each individual suspected of criminal activity. (If more than one, use continuation sheet). Include primary suspects only. Individuals who may have knowledge of the suspect criminal activity, but who are not themselves suspected of being involved, should be listed as witnesses under Item 10. Provide any additional details known with respect to prior referrals or affiliations.

a. NAME: (First/MI/Last) Anspaugh, Lisa
ADDRESS: (Street/City/State/Zip) Unknown
DATE OF BIRTH: (Month/Day/Year) Unknown
SOCIAL SECURITY NO: Unknown

- b. Relationship to the financial institution: (Check all applicable blocks)

<input type="checkbox"/> Officer	<input type="checkbox"/> Supervisor	<input type="checkbox"/> Director	<input type="checkbox"/> Manager	<input type="checkbox"/> Assistant
<input type="checkbox"/> Director	<input type="checkbox"/> Agent	<input checked="" type="checkbox"/> Employee	<input checked="" type="checkbox"/> Volunteer (Other)	<input checked="" type="checkbox"/> McDougal-McDonan

- c. Is person still affiliated with the financial institution:

☒ Yes ☒ No

If No, terminated ____, resigned ____. Date (Month/Day/Year):

Describe circumstances: (If necessary, use continuation sheet)

- d. Prior or related referrals:

☒ Yes ☒ No

If Yes, please identify.

- e. Is person affiliated with any other financial institution:

☒ Yes ☒ No Unknown at this time

or business enterprise:

☒ Yes ☒ No

If yes to either or both, please identify.

Anspaugh was allegedly a partner with Susan McDougal in several companies, and assisted McDougal with her "bookkeeping" for the McDougal's various companies including:

Madison Marketing	Designers Construction
McDougal & Associates	Madison Financial Corporation
Flowerwood Farms, Inc.	Whitewater Development Corp., Inc.
Pembroke Manor, Inc.	Rolling Manor, Inc.
Great Southern Land Co.	Tucker-Smith-McDougal
Smith-Tucker-McDougal	Smith-McDougal

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- 7a. EXPLANATION/DESCRIPTION OF SUSPECTED VIOLATION. Provide a brief narrative description of the activity giving rise to the referral, explaining what is unusual or irregular about the transaction. Details will be provided later in the form. The purpose of this paragraph is to provide a summary description of the overall transaction. (List applicable account numbers.)

Between February 1984 and July 1987, James B. McDougal, Susan B. McDougal, Lisa Anspaugh, Jim Guy Tucker, Stephen A. Smith, Bill Clinton, Hillary Rodham Clinton, and other individuals who are as yet unidentified, were principals in at least one, and possibly more, of the following companies and/or business interests, each of which maintained a checking account at Madison Guaranty Savings & Loan ("MGSL"):

Madison Marketing
McDougal & Associates
Flowerwood Farms, Inc.
Pembroke Manor, Inc.
Great Southern Land Co.
Smith-Tucker-McDougal

Designers Construction
Madison Financial Corporation
Whitewater Development Corp., Inc.
Rolling Manor, Inc.
Tucker-Smith-McDougal
Smith-McDougal

MGSL checking account histories from September 1984 through May 1985 were reviewed and analyzed for each of these entities (hereafter referred to as the "the combined companies"). The patterns that evolved from this review go back to February 1984, possibly earlier, and occur as late as July 1987.

During this time frame, some or all of the principals of the aforementioned companies allegedly allowed, or participated in, numerous questionable cash flow and "loan" transactions between the combined companies, and other financial institutions. The transactions reviewed and discussed herein will allege excessive overdrafts resulting in unauthorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud; each of these actions, compounded by the extended time frame during which they occurred, lends causation to the probability that some or all of the McDougal's business associates and partners, the collective principals of these combined companies, had knowledge of these activities. The extensive nature of these activities could allegedly constitute ongoing criminal and regulatory violations which lasted for a period of three or more years, and could have ultimately contributed to the failure of the Association.

Although some of these companies, such as Madison Marketing, Madison Financial Corporation, and Flowerwood Farms appeared to be viable and active entities, the others appeared to be little more than shell companies with limited assets, whose checking accounts went through sporadic flurries of activity, "money in/money out", then reverted back to minimal balances with very limited activity. The account histories indicate that the collective checking accounts for these entities incurred very limited, if any, monthly service charges, despite their below minimum balances, and limited overdraft charges regardless of the excessive number of overdrafts in several of the accounts.

An analysis of the aggregate checking accounts for these entities between December 1984 and May 1985 reflects a minimum of 95 check transactions occurring by and between the combined companies and/or outside financial institutions, totalling \$1,019,122. There were a minimum of 45 deposit transactions by and between the combined companies, affiliated persons and/or financial institutions which totalled \$1,079,142. The resulting minimum number of "money in/money out" transactions for these combined, predominantly shell, companies was \$2,098,264 over a six-month period of time. To produce all checks from each account, even for a six month period of time, would have been cost prohibitive as well as labor intensive; therefore, only randomly selected checks and deposits were produced from film for the 12/84 - 6/85 target time frame.

The combined companies "lent" one another in excess of \$190,000 during the time frame of December 1984 through May 1985. There were 31 checks written, designated as "loans" by and between the entities, that totalled \$192,886; however, there is no indication of any form of repayment between the entities. This premise lends support to the suspicion that the McDougal's were utilizing these shell companies as a personal "cash cow" from which to generate funds for their own use, and to the further benefit of some

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or all of their business partners, including loan payments to outside financial institutions on behalf of the various partnerships. The McDougals' allegedly further used these shell companies to filter funds from MGSL through Madison Financial Corporation and its subsidiaries for their own benefit.

From December 1984 through May 1985, the personal checking account of James and Susan McDougal (account # 424) was frequently overdrawn, with overdraft amounts of up to \$30,000, lasting for two and three weeks at a time. During this time frame, the combined companies wrote at least 10 checks to James or Susan McDougal, totalling \$53,170, calling the funds "loans". The minimum number of collective deposits from various sources shown going into the McDougals' account during the same time frame is in excess of \$690,000, with checks going out of the account totalling over \$622,000.

Examples of James McDougal's misuse of position are clearly indicated in the number of checks which force paid through the McDougals' joint checking account in the target time frame. The significant amounts, frequency and time span of the overdrafts are being alleged as unauthorized loans for the purposes of this referral. Substantiation of these activities is outlined in the following examples:

- On 1/28/85, check # 577 for \$13,181.07 was written from the McDougals' account to Worthen Bank for a loan payment. The signature on the check reads "James S. McDougal", but bears no resemblance to his actual signature. The day the check was written, there were insufficient funds in the account, at which juncture a \$14,000 "personal loan" was written from Flowerwood Farms (check # 179) to Jim McDougal. (Susan McDougal's signature on the Flowerwood Farms check had also been forged). Despite the \$14,000 loan, the check to Worthen Bank was force paid, overdrawing the McDougals' account by \$4,116.97, where the balance remained until a deposit of \$5,127.04 arrived from an unknown source.
- On 2/7/85, Susan McDougal sent check # 589 for \$3,134.28 to the IRS; the day the check was written the account was overdrawn by \$3,282.00, and when the check was force paid, the balance dipped to \$48,777.06. The initial overdraft of \$3,282.00 was caused by the force payment of the previously mentioned check to Worthen Bank.
- On 4/4/85, Susan McDougal wrote check # 688 for \$3,000 to the Bill Clinton Campaign Fund; the check was force paid on 5/3/85 when the account was already overdrawn \$47,897.73, increasing the negative balance to \$40,897.73. The same day, Flowerwood Farms wrote a \$3,000 check to Madison Guaranty, which was apparently cashed; given the identical dollar amounts, the probability exists that these funds were also contributed to Clinton's campaign, which, if active solicitations for contributions were occurring, could have provided the impetus for his business associates to write checks totalling \$6,000 to his campaign fund, one of which put the McDougals' own account in a \$40,000 negative balance.
- On 4/19/85, check # 699 for \$55,000 was written on the McDougals' account to Flowerwood Farms; this was done to cover Flowerwood's existing overdraft of \$450,994.18 which occurred when an \$86,612.68 check to Madison Guaranty was force paid. The \$86,612.68 check (#196) was a loan payment on McDougal related loan #1591. The date that the check for \$55,000 was written, the McDougals' account balance was \$19,429, and was subsequently overdrawn by \$48,077.83 when the check was force paid, documenting just one of many instances of check "kiting." The overdraft status on the McDougals' account was remedied by a \$29,209.30 check from Execucar, Inc. (allegedly the "car leasing department" of Madison Financial Corporation), which was noted as a "refund on black 280 SL Mercedes which had been purchased by the McDougals on 4/18/85. A similar "refund" situation occurred with a \$37,149.30 Madison counter check, written to Jim McDougal for an "85 380 SL Mercedes", signed by Henry (or Harry; signature almost illegible) Hamilton. Jim McDougal had previously written check # 691 for \$37,149.30 to Execucar Inc. on 4/9/85. In one instance, the funds were rebated to the McDougals when their account balance was in an excessive state of overdraft.

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On 5/24/85, check # 760 for \$83,233.29 was issued from the McDougal's account to Union National Bank, allegedly for a loan payment. The date the check was written, the McDougal's account contained a balance of \$963.19; Jim McDougal procured loan #2764 for \$85,000 from MGSL, depositing the funds into their joint account to cover the check to Union National Bank. However, despite the deposited loan proceeds, the \$83,233.29 check was force paid, putting the McDougal's account balance at \$<4,096.03>

It should also be pointed out that the McDougal's clearly diverted funds from their MGSL home purchase and improvement loan of \$351,502, funded in 2/83, for other purposes. Over \$100,000 was diverted for the purpose of bringing principal and interest payments current on five separate MGSL loans, as evidenced by McDougal check # 611 for \$95,562.62, and check # 612 for \$5,659.17. It should be further noted that check #616 for \$4,500 was written from the loan proceeds to Lorene McDougal, a relative, for undisclosed purposes.

In addition to McDougal's blatant misuse of position in allowing his personal account to exist in such an overdrawn state, he allowed the same circumstances to occur with the combined shell companies as well. Between 12/84 and 3/85, there were 16 overdraft situations within the accounts of the combined companies. The majority of these overdrafts were cured by deposits from one company to another, sometimes by "kiting" funds between accounts in which insufficient balances existed. This allegedly happened on at least two occasions with Whitewater Development, who evidently had another account (possibly at Bank of Kingston, now Madison Bank & Trust), into which funds were deposited from the MGSL Whitewater account, leaving it in an overdraft status.

During the target time frame, Whitewater Development wrote a minimum of 10 checks, totalling \$70,639.41. Of these 10 checks, five checks totalling \$60,625 were written on insufficient funds. The ensuing overdrafts were covered by funds from the other combined companies, some of which were provided by bank loans. Some of the Whitewater checks with more significant dollar amounts, such as check # 118 for \$7,500, and # 128 for \$5,071.23, were payable to The Bank of Cherry Valley for principal and interest on two separate loans, and were written on insufficient funds. Check # 118 was force paid, overdrawing Whitewater's account by \$<7,492.04>, where the balance remained until check # 152 from Tucker-Smith-McDougal for \$7,500 was deposited into Whitewater's account. The circumstances surrounding Whitewater check # 128 were similar, only the deposit came from the combined accounts of Rolling Manor, Tucker-Smith-McDougal, Flowerwood Farms and Pembroke Manor. Maurice Smith, principal and/or loan officer of the Bank of Cherry Valley, is allegedly a long time associate of Jim McDougal. Smith was also a frequent caller to Jim McDougal, according to the MGSL phone message logs.

Each instance in which Whitewater's actions resulted in an overdraft, no service charge or fees were assessed, with the exception of two in 1985, both of which were refunded. The two largest checks written by Whitewater during this time frame, check #137 for \$25,000, payable to Osarks Realty Co., and check # 138 for \$30,000, payable to James McDougal (alleged "loan repayment" - although the records show no indication of any loan from McDougal to Whitewater) were both force paid as there were insufficient funds in the account to cover either check. When the \$25,000 check paid, placing the balance at \$<24,470.90>, the overdraft was covered by a check from Flowerwood Farms for \$24,455.90 (the amount of the overdraft, less the \$15 service charge which was later refunded). The Flowerwood funds came from the proceeds of a \$135,000 cashiers check drawn on Stephens Security Bank, Stephens, Arkansas. The \$30,000 check written from Whitewater to James McDougal was written when Whitewater had a balance of \$270.13. When the check was force paid, the balance went to \$<29,744.87>, where it remained for two weeks until a \$30,000 check from Madison Financial Corporation (subsidiary of MGSL) was deposited into Whitewater's account. There was no explanation given as to why Madison Financial would have given (or even "loaned") Whitewater Development \$30,000.

At this juncture, it should be noted that shortly after the target time frame, in October 1985, the MGSL Board of Directors minutes reflect that Madison Financial Corporation was overdrawn by \$2.7 million; the Board subsequently voted to call the overdraft "an investment in the service corporation", as up to 66 of the Association's assets could be invested in service corporations, from a regulatory standpoint. It should be further noted that the \$30,000 check James McDougal received from Whitewater was endorsed to Earth Movers, Inc., (whose principal is former Senator J. W. Fulbright)

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who subsequently endorsed it to Madison Guaranty for the purpose of obtaining a cashier's check (drawn from MGSL account #7001312, transaction #7801). The cashier's check is currently unavailable, so the final destination of the funds is yet undetermined.

In addition, it should be pointed out that the records of the former MGSL Chief Financial Officer, Greg Young, reflect a \$30,000 "reserve" payment anticipated from Whitewater Development in 10/85 for an "engineering survey"; this information appears on a flow chart relating to Maple Creek Farms, a land investment/subdivision development of Madison Financial Corporation, and a second tier subsidiary of Madison Guaranty Savings & Loan. In addition, every month during the target time frame, Susan McDougal deposited a check for \$285.13 from Logan Charter Service into the Whitewater account; these funds were diverted from the Bank of Kingston to whom they were all payable, and endorsed by Susan McDougal to Whitewater's MGSL checking account in an apparent effort to keep a minimal balance in the account.

Forgery is also alleged to be a possible factor in several of the checks written on the Whitewater account. According to the MGSL signature card for Whitewater Development Corporation, Inc., the only signatory on the account is Susan McDougal; however, the signature on the card allegedly bears little resemblance to Susan McDougal's actual signature. It is interesting to note that the \$25,000 check written on the Whitewater account to Osarks Realty Co., has "James B. McDougal" signed to it even though he is not a signatory on the account. The signature on the check was allegedly signed by someone else, whose handwriting bears a striking resemblance to that of Lisa Anspaugh, a McDougal business associate in a number of other enterprises. In fact, Ms. Anspaugh allegedly forged or signed both James and Susan McDougal's signature to checks drawn on all of the combined companies accounts on numerous occasions during the time frame in question. Although at least one of the checks written by Whitewater to the Bank of Cherry Valley was actually signed by Jim McDougal, most of them were signed "James B. McDougal", allegedly by Susan McDougal or Lisa Anspaugh. If these were not actual instances of forgery, per se, then there were certainly numerous cases of unauthorized signatures on the accounts. That being the case, the McDougal's apparently set few parameters for "signature authority" on their personal and corporate accounts, with multiple checks showing no less than three different signatures for "James B McDougal" and no less than four different signatures for "Susan B McDougal".

An overview of the Whitewater account history supports possible criminal action on the part of Susan McDougal, Lisa Anspaugh, and at least one other individual, for alleged forgery, or unauthorized signatures in the name of James B. McDougal (and in the case of Lisa Anspaugh, the name of Susan McDougal) on numerous checks. In addition, the fact that James McDougal was not a signatory on the account, but signed checks regardless of that fact, shows his reckless disregard for regulatory requirements and banking laws. McDougal's documented willingness to allow the frequent overdraft status on the Whitewater account, ensuring that loans payments were made and corporate obligations met, served his own benefit as well as that of some or all of his business partners. Although circumstances point to the probability that some or all of his business partners were aware of the activity taking place within the Whitewater partnership and corporate checking accounts, there is insufficient evidence at this time to prove that they had knowledge. Consequently, these individuals will appear on the list of witnesses contained at the end of this referral.

Similar instances were allowed to occur with the account of Tucker-Smith-McDougal, whose principals were James McDougal, Jim Guy Tucker and Stephen A. Smith. The following examples are noted:

- On 1/22/85, check #161 for \$3,894.66 was written to First Commercial Bank for "interest" on a commercial loan. James McDougal's signature was allegedly signed or forged by Susan McDougal, who was technically the only signatory on the MGSL signature card. The date the check was written, the account did not contain sufficient funds, and subsequently went into an overdraft status of \$<2,953.00> when the check force paid. The overdraft was cleared with a check from Flowerwood Farms (#176) for \$3,500 on 1/28/85.

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- On 3/13/85, check #166 for \$4,000 was written to Citizen's Bank for "release deed Madison County". James McDougal's signature was yet again allegedly signed by his wife, Susan. The date the check was written, the Tucker-Smith-McDougal account did not contain sufficient funds, and the account went into overdraft status of \$<3,027.69> when the check was force paid on 3/19/85. The account maintained an overdraft status until 4/9/85, when a deposit of \$9,189.69 was received from Flowerwood Farms (check # 193). The funds from Flowerwood Farms were exactly enough to cover the existing overdraft, plus cover Tucker-Smith-McDougal check # 169 for \$5,664.73 which had been written to Citizen's Bank of Marshall, Arkansas, on 4/1/85 before there were sufficient funds available to honor the check.
- On 3/11/85, First Mortgage, Inc. wrote check # 5923 for \$1,150 to Madison Guaranty Savings and Loan. This check was allegedly endorsed by Susan McDougal for Madison Guaranty, and deposited to the account of Tucker-Smith-McDougal the day before a \$2,500 check written to Whitewater cleared the account, leaving a balance of \$72.31.

Similar instances involving the Flowerwood Farms account have been previously evidenced through the examples used in conjunction with the McDougal's personal checking account. Additional specific information on activity in each of the combined accounts will be forthcoming in the chronology of events which follows.

The extent of the foregoing activities will substantiate this referral's allegations of check kiting between the related entities ("the combined companies"), as well as transactions between McDougal's personal account and the combined companies. This referral will further allege that, due to the extended period of time over which these transactions occurred, these actions were probably known to some or all of the principals of the combined companies. Each of these principals appear on the witness list, as there is insufficient evidence at this time, as previously stated, to prove that they had knowledge of these activities. This range of events further serves to support the allegations of forgery, misuse of position, diversion of funds, and probable bank fraud as well as conspiracy to defraud the Institution on the part of James McDougal, Susan McDougal and Lisa Anspaugh.

- 7b. GIVE A CHRONOLOGICAL AND COMPLETE ACCOUNT OF THE SUSPECTED VIOLATION: (Use continuation sheet, if necessary.)

- Relate key events to documents and attach copies of these documents

For purposes of clarification, the following chronology of events is broken down by entity account, and in the case of James & Susan McDougal, by individuals.

James B. and Susan E. McDougal, MG&L Account # 424

- 1/28/85 Check # 577 for \$13,181.07 was issued to Worthen Bank for principal and interest payment on a loan. James McDougal's signature appears to have been forged, or signed by an unauthorized party on his behalf. There were insufficient funds in the account that date check # 577 was written; however, the McDougal's received a "personal loan" of \$14,000 from Flowerwood Farms, Inc. (check # 179 - showing an allegedly forged "Susan McDougal" signature) on 1/29/85. Despite the \$14,000 "loan"/deposit, the check to Worthen Bank was force paid on 2/6/85, leaving the account overdrawn \$<4,116.97>, where it remained until 2/7/85 when a deposit of \$5,127.04 was received from an unknown source.
- 2/5/85 Check # 589 for \$3,154.28 was issued to the IRS. The check was allegedly signed by Susan McDougal. On the date it was written, the account was overdrawn by \$<3,282.00>. When the check cleared on 2/19/85, the account's overdraft status increased to \$<8,777.05>. As previously noted, the initial overdraft status on the account was caused when check # 577 for \$13,181.07 to Worthen bank was force paid.

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- 2/19/85 Check # 611 for \$95,562.62 was issued too Madison Guaranty Savings & Loan, for principal and interest payments on five McDougal related loans. This check cleared from loan proceeds of \$351,502.80 deposited to McDougal's account on 2/22/85. The proceeds were designated "purchase and renovation of home" for the McDougals; however, over \$100,000 of the proceeds were ultimately diverted for the purpose of bringing other debt current.
- 2/19/85 Check # 612 for \$5,659.17 was issued to Madison Guaranty Savings & Loan for interest on a McDougal related \$85,000 unsecured commercial loan. Again, the check cleared through the funds provided by proceeds from the home loan.
- 2/20/85 A deposit for \$1,000 was credited to the McDougal's account; the deposit was check # 181 from Flowerwood Farms, allegedly signed by Susan McDougal, and deposited to their account when it was overdrawn \$<11,687.09>.
- 2/21/85 Check # 615 for \$178,301.02 was issued to Madison Bank & Trust (formerly the Bank of Kingston) to payoff "#4 Bettswood Mortgage at Pulaski Bank". #4 Bettswood is the address of the McDougal's new home. It is recommended that the Pulaski Bank records be reviewed to verify this information.
- 2/22/85 A deposit for \$10,000 was credited to the McDougal's account; the funds coming from Madison Marketing check # 238 payable to Susan McDougal, with no specific stated purpose. Prior to this deposit, the McDougal's account was overdrawn \$<8,612.05>.
- 2/22/85 Loan proceeds, in the form of Cashier's Check # 2218 for \$351,502, were deposited into the McDougal's account. As noted, this loan was for the stated purpose of purchasing and renovating a home.
- 2/26/85 Check # 616 for \$4,500 was issued to Lorene McDougal, one of Jim McDougal's relatives. This check did not indicate a specific purpose, and cleared through the funds provided by the loan proceeds. As the McDougal's were contributing to the Clinton Campaign Fund during this time frame, it is recommended that a further investigation be undertaken to determine the possibility that these funds were provided to Lorene McDougal for the possible purpose of making additional campaign contributions on behalf of the McDougals or Madison Guaranty.
- 2/27/85 Check # 617 for \$450 was issued to Lorene McDougal. Again, there was no designated purpose on the check, which raises the previously unanswered question. Both checks to Lorene McDougal were signed by Susan McDougal.
- Check # 157 for \$4,500 was issued to Madison Bank & Trust for interest on loan # 1376.72. This check also cleared from the home loan proceeds, putting the dollar amount of funds diverted for other debt to over \$100,000.
- NOTE: It appears that the McDougal's each kept their own set of checks for their account #424, and would apparently write checks from which ever pad was available at the time. The numbers on the checks frequently range all over the spectrum in a non-sequential order.
- 3/1/85 Check # 158 for \$8,250 was issued to Robert T. Wilson for "payment on note". Wilson's specific role in this transaction has not been defined, nor has the purpose of the "note" (loan) in question. Jim McDougal allegedly signed this check, which appears to be a fairly rare occurrence.
- 3/10/85 Check # 178 for \$13,248 was issued to Haynes Auto, with no specifically stated purpose, but would appear to be for the purchase of a car. The check is signed "Susan McDougal", but does not appear to be Susan McDougal's alleged signature. This check cleared from the home loan proceeds. The same day check # 179 for \$1,738 was issued to Haynes Auto,

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again with no specifically stated purpose, and check # 180 for \$13,250 was written to a Mr. Charles Bronson, for no specifically stated purpose. All three of these checks, totalling \$28,236, cleared from the proceeds of the McDougal's home loan.

- 3/10/85 Check # 181 for \$4,852 was issued to ITT Kruse Int.; the memo field shows several loan numbers. It is recommended that records be subpoenaed to determine the nature of, and participants in, this loan.
- 3/19/85 Madison Guaranty Savings issued check # 2104 for \$30,750 to James B. McDougal for "reimbursement for lease auto purchased for Leasing Department". It is recommended that further investigation be conducted to determine if this was reimbursement for the \$14,980 in checks written to Haynes Auto on 3/10, and possibly the \$13,250 check also written on 3/19, to Charles Bronson. If this is the case, the checks written on 3/10 totalled \$28,236, indicating that James McDougal was reimbursed for \$2,514 that he did not actually spend.
- 3/29/85 Check # 676 for \$11,000 was issued to Quapaw Title Company, with no stated purpose. This transaction would seem to indicate the possibility of a formal real estate sale or closing of some type; possibly related to the purchase of the McDougal's home, or related in some manner to the \$25,000 transaction between Whitewater Development and Osarks Realty Company. It is recommended that the Quapaw Title Company and Osarks Realty Company records be reviewed to assess the purpose of the \$11,000 check from the McDougals, and it's potential relationship to Whitewater and Osarks Realty, if any.
- 4/4/85 Check # 688 for \$3,000 was issued to the Bill Clinton Campaign Fund, and allegedly signed by Susan McDougal. The account balance on the date the check was written stood at \$<7,897.73>; when the check cleared on 5/3, the overdraft status increased to \$<10,897.73>. The account balance remained at this level until 5/9 when \$5,281.21 was deposited from an unidentified source.
- 4/9/85 Check # 691 for \$37,149.30 was issued to Erecucar, Inc., allegedly a subsidiary of Madison Financial Corporation. The check did not state a specific purpose. When the check was written, the account had a balance of \$34,538.78; the check cleared on 4/12 overdrawing the account by \$<10,075.80>. Funds totalling the exact same amount were deposited into the McDougal's account on 4/22; the source being a Madison Guaranty Savings & Loan counter check for \$37,149.30, allegedly signed by either Barry or Barry Hamilton, with the notation "85 MB 380 AL". It is conceivable that McDougal purchased the car, and then sold it for the same amount two weeks later. However, when considered with the fact that a similar situation occurred with McDougal and Erecucar 9 days later on 4/18, the sale/purchase theory becomes increasingly implausible.
- 4/17/85 A deposit of \$33,000 was credited to the McDougal's account; the source remains unidentified at this time, but research continues.
- 4/18/85 Check # 697 for \$29,209.30 was issued to Erecucar, Inc. for a black Mercedes. The same amount was refunded to the McDougal's account by Erecucar on 5/1/85 when their account was overdrawn by \$<28,812.96>. By this point the McDougal's have evidently purchased, and either returned or sold, two expensive cars in a 10 day period of time. It is recommended that these transactions be further investigated through the records of Erecucar, Inc. to determine that nature of this activity.
- 4/19/85 Check # 699 for \$55,000 was issued to Flowerwood Farms; this was a "loan" to cover Flowerwood's existing overdraft of \$<50,994.17>, which occurred as a result of an \$89,612.68 payment to Madison Guaranty Savings & Loan on

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- a McDougal related loan. At the time the \$55,000 check/"loan" to Flowerwood was written, the McDougal's had \$19,429.30 in their account. When the check was force paid on 4/23, the McDougal's account was overdrawn by \$428,077.82>
- 5/1/85 Check # 723 for \$1,207.30 was issued to Madison Guaranty for the April and March payments on McDougal related loan # 1064. The account was overdrawn \$47,897.73> when the check force paid on 5/3/85. The end result of this transaction appears to be the McDougal's overdrawning their account, resulting in an unauthorized "loan" from the Association, in order to pay the Association for their April and March loan payments, there appears to be little, if any, logic to these circumstances.
- 5/1/85 Check # 704 for \$50 was issued to the Democratic Party of Arkansas, for the purchase of "2 Jefferson Jackson Day dinner tickets". The account balance was \$45,826.36> when the check force paid.
- 5/15/85 Check # 748 for \$20,000 was issued to Madison Guaranty for the purchase of Cashier's Check # 2704. The remitter on the Cashier's Check was Earth Mover's, Inc., whose principal is J.W. Fulbright, former Senator from Arkansas. Fulbright endorsed the check "for deposit only to Riggs National Bank" on 5/18. On 5/20, \$20,000 was deposited into McDougal's account which was overdrawn \$417,682.20> at the time. The source of the deposit is undetermined at this time. It is recommended that Riggs National Bank records be reviewed to determine the possibility that these funds traveled from Fulbright back to McDougal. If so, this transaction is a likely candidate for possible check kiting.
- 5/16/85 A deposit of \$8,370 was credited to McDougal's account, which was overdrawn \$426,052.20> at the time. The funds came from Flowerwood Farms check # 204 for \$190, Pembroke Manor check # 128 for \$5,300, Great Southern Land Company check # 126 for \$180, Rolling Manor check # 212 for \$2,400 and McDougal & Associates check # 107 for \$300. Each of the checks was designated as a "loan".
- 5/24/85 Check # 760 for \$83,233.29 was issued to Union National Bank. When the check was written, the account contained \$963.19. McDougal borrowed \$85,000 from MGSU (loan # 2764), and the loan proceeds were deposited into their account to cover the \$83,233.29 check. However, when the check cleared on 5/31, it was forced paid, leaving the account with an overdraft balance of \$4,096.03>.
- Whitewater Development Corporation, Inc., Account # 2301513
Principals: James and Susan McDougal
Bill and Military Rodhan Clinton
- 12/7/84 The Whitewater account was overdrawn by approximately \$46,000>, when a deposit for \$9,310 brought the balance up to \$3,423.65. The deposit was made up of funds from the accounts of the combined companies: Tucker-Smith-McDougal check # 159 for \$1,600, Rolling Manor check # 198 for \$330 and Pembroke Manor check #120 for \$7,100. Each check was designated as a "loan" to Whitewater, and each check was allegedly signed by either Susan McDougal, or Lisa Ansbaugh signing as Susan McDougal. Once the deposit was credited, Whitewater issued check # 127 for \$3,27.18 to the Bank of Cherry Valley, taking the account balance down to \$147.47.
- 1/4/85 Check # 128 for \$5,071.23 was issued to the Bank of Cherry Valley. The check was signed "James B. McDougal" (who had no signature authority on the account) allegedly by Susan McDougal, based on the handwriting. This check cleared the Whitewater account on 1/11 - the day after a deposit for \$4,660 was made to Whitewater by the combined companies accounts.

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- 1/10/85 Whitewater received a deposit for \$4,660 from the combined company accounts of Rolling Manor, Tucker Smith McDougal, Flowerwood Farms and Pembroke Manor, bringing the account balance to \$8,095.27.
- 1/22/85 Check # 129 for \$1,000 was issued to Whitewater Development Corporation, with the notation "Acct 317.5". This check cleared on 1/28; the same day that Flowerwood Farms issued check # 177 for \$1,000 to Whitewater, bringing the account balance up to \$1,446.07. Without the benefit of the deposit from Flowerwood, the check written by Whitewater to the Bank of Cherry Valley would have been insufficient.
- 2/15/85 Check # 132 for \$3,000 was issued to Chris Wade (an appraiser, according to MGSL Board Minutes), with no specific stated purpose. The check was signed "James B. McDougal", allegedly by Susan McDougal. This check cleared on 3/13, when the Whitewater account was already overdrawn \$<1,891.03>, increasing the overdraft to \$<4,891.03>. On the same date, there was a deposit made to the Whitewater account from the combined companies accounts, curing the overdraft.
- 2/18/85 Check # 133 for \$1,625 was issued to Charles E. James "for accounting" services. The check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. This check cleared on 2/21/85, putting the account into overdraft status by \$<1,192.06>. The account effectively stayed overdrawn until 3/13, when three deposits (two from the combined companies and one from an undetermined source) totalling \$8,800 were credited. The deposits were for \$3,300, from the combined accounts, \$2,500 from Tucker Smith McDougal, and \$3,000 from an unidentified source. Given the proximity of this deposit to the \$3,000 check written to Chris Wade, it is recommended that further research be conducted to determine the possibility of Wade "refunding" the \$3,000 back to Whitewater, which could account for the "mystery deposit."
- 2/21/85 Check # 134 for \$1,000 was issued to Whitewater Development Corporation with the notation "Account 317.5". The date the check was written the account balance was \$<1,192.06>, and when the check cleared on 2/28, the overdraft status increased to \$<1,906.93>. Evidence points to the probability that the MGSL Whitewater account was allegedly "swapping", or kiting, checks with a sister account at another bank, in order to maintain a certain account balance.
- 3/7/85 Check # 135 for \$650 was issued to Charles James, again for "accounting" services. This check cleared the account, taking the balance to \$258.97 on 3/22.
- 3/22/85 Check # 137 for \$25,000 was issued to Ozarks Realty Company; the purpose was not stated on the check. This check was signed "James B. McDougal, allegedly by Lisa Anspaugh, based on the handwriting. The date the check was written, Whitewater's account reflected a balance of \$258.97; when the check force paid on 4/1, the account was overdrawn by \$<24,470.90>, which included a \$15 overdraft charge that was later rebated. The account stayed overdrawn until 4/9 when a \$24,455.90 deposit was received from Flowerwood Farms (check # 194). This deposit amount was exactly the amount of the overdraft, less the \$15 overdraft charge. Flowerwood Farms provided the funds from a \$135,000 cashiers check drawn on Stephens Security Bank of Stephens, Arkansas, which had previously been deposited to it's account.

NOTE: According to various Oklahoma, Texas and New York newspaper reports from March 1992, this could have been the time frame in which Whitewater was conducting transactions regarding the house that was allegedly purchased and subsequently sold by Ms. Clinton. It is recommended that the Whitewater and Ozarks Realty records be reviewed to determine the possibility of any existing relationship between these two transactions, and the nature of any such relationship, if found.

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- 4/9/85 A deposit of \$24,455.90 was credited to Whitewater's account. As previously noted, the funds came from Flowerwood Farms check # 194.
- 4/19/85 Check # 138 for \$30,000 was issued to James B. McDougal with the notation "loan repayment". When the check was written, the account balance was \$270.13; when the check force paid, the account was overdrawn by \$<29,744.87>. This check was signed "Susan McDougal", allegedly by Lisa Anspaugh. James McDougal endorsed this \$30,000 check to Earth Movers Inc. (J. W. Fulbright), who in turn endorsed it to Madison Guaranty for the purchase of a Cashier's Check, drawn from MGSL account # 7001312, transaction # 7801. Research to locate the firm of the Cashier's Check is continuing.
- 4/29/85 Check # 139 for \$17 was issued to the Arkansas Director Finance Administration for the 1985 corporate franchise tax. The check was signed "Susan McDougal", allegedly by Lisa Anspaugh.
- 4/30/85 A deposit for \$30,000 was credited to Whitewater's account. The funds were provided by Madison Financial Corporation, but no purpose was stated on the check. This deposit brought the Whitewater balance from \$<29,744.87> to \$255.13. It is recommended that the records of Madison Financial Corporation be reviewed to determine the specific business purpose of the funds remitted to Whitewater Development. The check from Madison Financial was signed by MGSL Chief Financial Officer, Greg Young, who was also responsible for creating the previously referenced "Reserves" spreadsheet (see referral summary) in which a 10/85 \$30,000 "engineering survey" fee was to be charged to (or reserved from) Whitewater Development.
- Tucker-Smith-McDougal, MGSL Account # 2301353
Principals: James B. McDougal
Jim Guy Tucker
Stephen A. Smith
- 1/22/85 Check # 161 for \$3,894.66 was issued to First Commercial Bank for interest on a loan. The check was signed "James B. McDougal", allegedly by Susan McDougal. James McDougal does not appear on the signature card as a signatory on this account. The date the check was written, the account balance did not contain sufficient funds; when the check cleared on 1/28, the account was overdrawn \$<2,953.00>. The same day, Flowerwood Farms made a \$3,500 "loan" (check # 176) to Tucker Smith McDougal, allegedly for the purpose of covering the overdraft.
- 2/7/85 Check # 162 for \$3,900 was issued to James B. McDougal as a "personal loan". The check was allegedly written and signed by Susan McDougal. This check was deposited to McDougal's account along with a check from Madison Financial Corporation for \$2,127.04 noted as "salary" on the deposit slip.
- 2/14/85 Check # 163 for \$300 was issued to James B. McDougal for "petty cash." This check was also allegedly written and signed by Susan McDougal.
- 2/17/85 Check # 164 for \$1,600 was issued to Charles E. James for "accounting" services. The check was signed "Susan McDougal" allegedly by someone other than Ms. McDougal, and appears to be the signature showing on the actual MGSL signature card. As previously noted, the signature on the MGSL account signature card is not believed to be that of Susan McDougal.
- 3/11/85 A deposit of \$1,150 was credited to the Tucker Smith McDougal account; according to the deposit slip, the funds were related to "Robert Armstrong". However, the check was actually payable to Madison Guaranty Savings, and endorsed on behalf of Madison Guaranty, allegedly by Susan McDougal, and subsequently deposited to the Tucker Smith McDougal account. This deposit was made one day prior to the clearing of Tucker Smith McDougal check # 163 for \$2 and

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- 3/12/85 Check # 165 for \$2,500 was issued to Whitewater Development. This check, along with checks from the other combined companies accounts totalling \$3,300, were deposited to Whitewater on 3/12, curing an overdraft of \$4,891.03. The overdraft status in the Whitewater account was caused by the force pay of check # 132 for \$3,000 issued to Chris Wade.
- 3/13/85 Check # 166 for \$4,000 was issued to Citizens Bank for "release deed in Madison County". This check was signed "James B. McDougal", allegedly by Susan McDougal. The date the check was written, there were insufficient funds in the Tucker Smith McDougal account; the check cleared on 3/19, overdrawing the account by \$3,927.60. This overdraft situation existed for three weeks, until 4/9, at which time a deposit of \$9,189.69 was made into the account by check # 193 from Flowerwood Farms. The difference in the deposit amount and the new account balance, \$5,664.73, was exactly the amount necessary to cover Tucker Smith McDougal check # 169 for \$5,664.73 to Citizen's Bank, written on 4/1 when the account was still overdrawn.
- 4/1/85 Check # 169 for \$5,664.73 was issued to Citizen's Bank of Marshall, Arkansas for payment on "notes 40071190 and 00031484". The status of the account at this time was sufficiently discussed in the foregoing Tucker Smith McDougal transaction dated 3/13/85.
- Flowerwood Farms, Inc. MGL Account # 2301361
Principals: Undetermined at this time
- 12/11/84 Check # 170 for \$8,000 was issued to James B. McDougal. At the time this check was issued, the McDougal's account was overdrawn by \$4,095.19. This deposit from Flowerwood brought the balance up to \$3,904.61.
- 1/10/85 Check # 172 for \$1,430 was issued to Whitewater Development as part of a \$4,660 deposit. The funds from this deposit were allegedly used to cover Whitewater's check # 128 for \$5,071.23 to the Bank of Cherry Valley.
- 1/22/85 Check # 173 for \$6,202.26 was issued to First Commercial Bank for "interest on note # 00003618". The check was signed "James P. McDougal" allegedly by Susan McDougal. The date the check was written, the account contained a balance of \$866.74. However, on 1/23 a \$28,500 deposit was credited to the account, received from Bill Benley (brother-in-law of Susan McDougal) allegedly for "20 acres in Polaski County". The check for \$6,202.26 cleared the Flowerwood account on 1/23.
- 1/24/85 Check # 175 for \$3,500 was issued to James B. McDougal. This check was part of a \$4,675.41 deposit to McDougal's account.
- 1/28/85 Check # 176 for \$3,500 was issued to Tucker Smith McDougal for the alleged purpose of covering the existing Tucker Smith McDougal overdraft. This check was allegedly signed by Susan McDougal.
- 1/28/85 Check # 177 for \$1,000 was issued to Whitewater Development as a "loan" to cover Whitewater's existing overdraft. This check was allegedly signed by Susan McDougal.
- 1/29/85 Check # 179 for \$14,000 was issued to James P. McDougal as a "personal loan". This check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. The loan was allegedly intended to cover a \$13,181.07 check written on McDougal's account to Worthen Bank; however, the check was force paid, and McDougal's account was overdrawn.
- 3/12/85 Check # 183 for \$1,500 was issued to Great Southern Land Company, designated as a "loan." The same day, check # 184 for \$500 was issued to McDougal & Associates, also designated as a "loan." This check was signed "Susan McDougal", allegedly by Lisa Anspaugh.

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- 4/1/85 Check # 188 for \$11,763.11 was issued to International Paper Realty Corporation as a principal and interest payment on a note. The check was signed "Susan McDougal", allegedly by someone other than Susan McDougal. There was a balance of \$1,550.91 in the account the date the check was written; however, a \$135,000 deposit was received and credited prior to this check clearing.
- 4/3/85 Check # 189 for \$53,053.41 was issued to First Commercial Bank to "pay off commercial loan". Funds for this check were derived from a \$135,000 deposit to Flowerwood's account the same day.
- 4/3/85 A deposit of \$135,000 was credited to the Flowerwood account from a Cashiers Check drawn on the Stephens Security Bank of Stephens, Arkansas. Funds from this deposit were remitted from Flowerwood to:
- Madison Guaranty for \$3,000, check # 192 (further research into the possibility that this was a campaign contribution has previously been suggested)
 - Tucker Smith McDougal for \$9,189.69, check # 193, allegedly to cover an existing overdraft.
 - Whitewater Development for \$24,455.90, check # 194, allegedly to cover the overdraft caused by Whitewater's check for \$25,000 to Oaks Realty.
 - First Commercial Bank for \$53,053.41, check # 189, allegedly for a McDougal related loan payoff.
 - International Paper Realty for \$11,763.11, check # 188, for a loan payment
 - Madison Guaranty Savings and Loan for \$86,612.68, check # 196, allegedly to pay off a McDougal related loan. This check overdraw the account by \$<50,994.18>, which was subsequently covered by James B. McDougal's check for \$55,000, which overdraw McDougal's account by \$<28,077.82>
- 4/4/85 Check # 192 for \$3,000 was issued to Madison Guaranty Saving; there was no specific purpose stated on the check. As previously noted in this referral, it was recommended that further research be conducted into the disposition of these funds to determine the possibility that this was an additional campaign contribution, given the time frame involved.
- 4/9/85 Check # 193 for \$9,189.69 was issued to Tucker Smith McDougal, allegedly for the purpose of covering the existing overdraft in the Tucker Smith McDougal account, as well as covering the yet outstanding Tucker Smith McDougal check # 169 for \$5,664.73 to Citizen's Bank.
- 4/9/85 Check # 194 for \$24,455.90 was issued to Whitewater Development, allegedly to cover Whitewater's overdraft, as previously noted. This check was signed "James B. McDougal", allegedly by Lisa Ansbaugh.
- 4/17/85 Check # 196 for \$86,612.68 was issued to Madison Guaranty Savings & Loan for "principal and interest" on McDougal related loan # 1391. This check overdraw the Flowerwood account by \$<50,994.18> when it was force paid. Funds to allegedly cover this overdraft were provided by check # 699 for \$55,000 from James B. McDougal's account. As noted in prior transaction analyses, the \$55,000 check from McDougal overdraw his account by \$<28,077.82>. This transaction provides a blatant example of the check kiting alleged in the summary of the referral.

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5/16/85 Check # 204 for \$190 was issued to James B. McDougal as a "loan." This check was part of a deposit from the combined accounts totalling \$8,370 which went into McDougal's account at a time when it was overdraw \$<26,057.20>

Of the combined companies accounts, Flowerwood Farms, Inc., Whitewater Development Corporation, Inc., and Tucker Smith McDougal, in conjunction with the personal account of James B. and Susan H. McDougal, were the most active and egregious contributors to the alleged overdraft and check kiting activities. Although the other entities, (Relling Manor, Inc., Pembroke Manor, Inc., Great Southern Land Company, McDougal & Associates, etc.) contributed a significant share of the "combined companies" deposits and "loans" between the various accounts, the specifics regarding their activities have been omitted for the purposes of brevity. Individual transaction information for the "combined companies" accounts during the 12/84 - 5/85 time frame can be found in the attached database report, which outlines the dates, transaction types, check numbers, payee, payor and deposit recipients. This database has been individually sorted by date, dollar amount, payee, payor and deposit recipient in order to facilitate ongoing research and further investigative activities.

- Explain who benefitted, financially or otherwise, from the transaction, how much, and how.

Those who allegedly stood to gain the most benefit from these numerous and questionable inter-account transactions, were the principals of the combined entities; James and Susan McDougal, Lisa Anspaugh (who is a principal in Designer Construction and allegedly Madison Marketing, as well as an alleged business associate of Jim Guy Tucker), Bill and Hillary Rodham Clinton, Jim Guy Tucker, Steve Smith, and any other principals as yet unidentified. The overdrafts and "loan" transactions, or alleged check "swapping" and kiting, between the combined companies accounts ensured that loan payments and other corporate obligations were met, thus clearly benefitting the principals of each entity.

In addition, the McDougal's stood to gain extensive financial benefit by utilizing these various shell companies as a vehicle through which to channel funds from Madison Guaranty, through Madison Financial and it's subsidiaries, into the personal account of James and Susan McDougal.

- Furnish any explanation of the transaction provided by the suspect and indicate to whom and when it was given.

To date, no explanation has been given by any suspect.

- Furnish any explanation of the transaction provided by any other person.

No explanations of these transactions have been provided by anyone other than the investigator at this time.

- Furnish any evidence of coverup by the suspect, or evidence of an attempt to deceive federal or state examiners or others.

This entire series of transactions by and between the combined companies and their accounts is being alleged as an effort by the McDougal's to "smokescreen" the flow of funds from Madison Guaranty and it's subsidiaries, into the various entities owned and operated by the McDougal's and their business associates.

- Indicate where the suspected violation took place (e.g., main office, branch, other).

These violations collectively took place at the Madison Guaranty savings and loan office at 16th and Main in Little Rock, Arkansas.

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- Recommend any further investigation that might assist law enforcement in fully examining the potential violation.

Individual recommendations have been noted within the transactional analyses throughout the body of the referral. However, it should be reiterated that certain individuals on the witness list should be extensively interviewed with regard to their knowledge of the activities between the combined companies and their accounts.

- 7c. Indicate whether the suspected violation appears to be an isolated incident or whether it relates to other transactions. (Explain)

No; this violation was not isolated, but rather ongoing over a period of three or more years, possibly making a significant contribution to the failure of the institution.

8. EXCLUSION OF INFORMATION FROM THE REFERRAL:

Has any pertinent information been excluded from this referral as a result of any legal or other restraint?

___ Yes ___ X No If so, why?

Have the excluded information or documents been segregated for later retrieval?

___ Yes ___ X No

NOTE: DUE TO THE BULK OF THE EXHIBITS, THEY WILL BE SHIPPED TO THE U.S. ATTORNEY'S OFFICE UNDER SEPARATE COVER.

9. HAS SUSPECTED INDIVIDUAL(S) MADE ANY ADMISSIONS?

___ Yes ___ X No If so, who?

10. WITNESSES:

List any witnesses who might have information about the suspected violation and describe their position or employment. Indicate if they have been interviewed. (Use continuation sheet, if necessary.)

	NAME	POSITION	ADDRESS (CITY/STATE/ZIP)	TELEPHONE NUMBER	INTERVIEWED	
					YES	NO
1.	Bill Clinton	Governor/AR and McDougal business associate	Little Rock, Arkansas	Unknown		X
2.	Hillary Rodham Clinton	Counsel/MGSL and McDougal business associate	Little Rock, Arkansas	Unknown		X
3.	Jim Gray Tucker	Lt. Governor/AR and McDougal business associate	Little Rock, Arkansas	Unknown		X
4.	Stephen A. Smith	McDougal business associate	Little Rock, Arkansas	Unknown		X
5.	J. W. Fulbright	McDougal business associate	Little Rock, Arkansas	Unknown		X
6.	Greg Young	Former MGSL Chief Financial Officer	Little Rock, Arkansas	Unknown		X

In addition to the foregoing witnesses, it is also recommended that the following individuals be interviewed with respect to their knowledge:

Kirby Randolph - former receptionist at MGSL, and recipient of all monthly statements on the combined companies accounts in lieu of mailing; also the wife of R. D. Randolph, a McDougal business associate and frequent depositor to various combined companies accounts.

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R. D. Randolph - former McDougal business associate; allegedly involved with several of the combined companies.

Bonnie Crocheron - currently employed by MGSL's successor entity, Central Bank and Trust. Formerly involved in administration at the Association; allegedly knowledgeable regarding the Institutions Demand Deposit Accounts and their holders.

Charles E. James - accountant for the combined companies, and registered agent for Whitewater Development Corporation.

11. DISCOVERY AND REPORTING:

a. Who discovered the suspected violation and when?

Investigator; in May 1992

b. Has the suspected violation been reported to the Board of Directors?
☐ Yes ☐ No ☐ Not Applicable

By whom and when? ☐ Not Applicable

c. Has the Board of Directors taken action?
☐ Yes ☐ No ☐ Not Applicable

If so, what and when? ☐ Not Applicable

d. Has the suspected violation previously been reported to federal or local law enforcement or to any federal or state supervisory agency?
☐ Yes ☒ No

If Yes, Agency:

Agent:

Address: (City/State)

Telephone Number:

12. LOSS:

a. Amount of Loss known: \$

Undetermined at this time

b. Restitution by:

Not Applicable

In the amount of: \$

Not Applicable

c. Name of Applicable Surety Bond Company:

d. Amount of Bond: \$

e. Amount of deductible: \$

f. Was claim filed? ☐ Yes ☐ No

g. Settlement by Surety Company: \$

h. Total restitution and settlement to date: \$ ☐ Not Applicable

i. Net Loss: (After subtracting any amounts paid in the form of restitution or settlement) \$

j. Is additional loss suspected? ☒ Yes ☐ No

(If yes, explain)

The nature of the transactions identified in this referral could lead to additional losses under further investigation.

k. Has the suspected violation had a material impact on, or otherwise affected, the financial soundness of the institution? If so, please explain.

Yes; the activities identified and alleged within this referral could have contributed to the failure of the institution.

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13. OFFER OF ASSISTANCE:

The individuals listed below are/will be authorized to discuss this referral with appropriate law enforcement officials and to assist in locating or explaining any documents pertinent to this referral, provided that contact is first made with:

NAME	TELEPHONE NUMBER
Lee O. Ausen/Department Head/ Criminal Investigations/KOCO	(816) 931-2212
L. Richard Iorio/Field Investigations Officer/KOCO	(816) 531-2212

14. FORM PREPARED BY: Laura Jean Lewis
 Position: Criminal Investigator
 Agency/Institution: Resolution Trust Corporation
 Telephone Number: (816) 968-7237
 Date: August 31, 1992

15. AUTHORIZATION FOR TRANSMITTAL:

<u>Laura Jean Lewis</u>	<u>8/31/92</u>
Investigator	Date
<u>Lee Ausen</u>	<u>8/31/92</u>
Criminal Investigations Department Head	Date
<u>L. Richard Iorio</u>	<u>9-1-92</u>
Field Investigations Officer	Date



U.S. Department of Justice

Office of the Deputy Attorney General.

Associate Degree • Advisory Counsel

Washington, D C. 20530

February 18, 1993

MEMORANDUM TO: John C. Keeney
Acting Assistant Attorney General

FROM: Douglas N. Frazier *DNF*
Associate Deputy Attorney General

RE: Recusal by the U.S. Attorney's Office
for the Eastern District of Arkansas on a
Resolution Trust Corporation Referral

The attached recusal package is forwarded for your review and recommendation. Thanks.

Attachment

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U.S. Department of Justice

Office of the Associate Attorney General

The Associate Attorney General

Washington, D.C. 20530

November 1, 1993

MEMORANDUM FOR THE ATTORNEY GENERAL
DEPUTY ATTORNEY GENERAL
✓ ACTING ASSISTANT ATTORNEY GENERAL
FOR CRIMINAL DIVISION

FROM: Webb Hubbell *WJH*
SUBJECT: Recusal

This memorandum will confirm prior discussions I had with Irv Nathan regarding any pending matter dealing with Madison Guaranty Savings and Loan or Mr. & Mrs. James McDougal. I am recusing myself from any matter regarding them.

Upon further thought and consultation with David Margolis, I believe that the Office of the Associate Attorney General should be recused on any of these matters, and I will instruct my staff that we are all recused; even though it is very unlikely that any of them would be contacted or consulted.

cc: Irv Nathan
Jo Ann Harris

TEAM 000917

016848

Rec'd By: GEMCD

3481

The Law Firm of
Skokos & Coleman
A Professional Association

Theodore C. Skokos
Randy Coleman
George J. Bequette, Jr.

7200 TCBY Tower
425 West Capitol Avenue
Little Rock, Arkansas 72201-3439

Telephone
(501) 374-1100
Telecopier
(501) 374-5092

September 20, 1993

VIA HAND DELIVERY

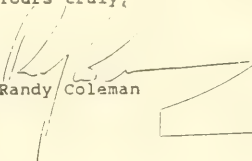
Ms. Paula Casey
U. S. Post Office & Courthouse
600 West Capitol Avenue
Little Rock, AR 72203

Re: David Hale

Dear Paula:

Apparently we are not going to achieve anything further on plea negotiations in this case at the present time. Time is becoming a precious commodity. While we do not feel that the Government should proceed with an indictment against David Hale, we would suggest that any return of the indictment be sealed to allow the sides further time to negotiate a difficult situation.

Yours truly,


Randy Coleman

cc: ✓ Mr. Fletcher Jackson
Mr. Mike Johnson

hal/fcaaz/nc

007632



United States Attorney
Eastern District of Arkansas

Post Office Box 1229
Little Rock, Arkansas 72203

September 20, 1993

Randy Coleman
Attorney at Law
3200 TCBY Tower
425 W. Capitol Ave.
Little Rock, AR 72201-3439

Dear Randy:

Earlier today I phoned you and requested that you provide a proffer of any information your client wished to bring to our attention. You have responded by letter dated this date in which you indicated that you did not believe we will achieve anything further in plea negotiations. As you acknowledged, your letter was in response to our earlier phone conversation.

Our position is as we have stated to you before, that is, we are fully interested in all information your client has to offer. Because of his significant involvement in criminal activity, it is unacceptable to us to grant him immunity. We are willing to provide your client with a motion authorizing reduction of sentence for substantial assistance upon his plea of guilty to a felony charge of fraud and his providing the substantial assistance. Of course to date your client has offered no tangible information on which any such arrangement could yet be made. My understanding of your letter is that he chooses not to do so at this time.

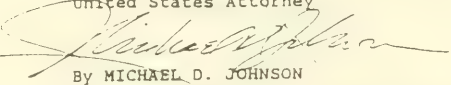
We see no reason not to proceed with the presentation of our case to the grand jury and our other normal process of handling grand jury matters. Should the grand jury decide to indict your

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client, we will remain ready to listen to any proffer you or your client have to offer and go forward on the basis that we have outlined above.

Sincerely,

PAULA J. CASEY
United States Attorney

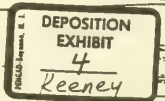

By MICHAEL D. JOHNSON
First Assistant/Chief,
Criminal Division

MDJ/vr

00-7638

Date Mon Sept 20, 1993

	Time		To/From	Phone No.	Message
	In	Out			
✓	1:50 9:10	2:10 12:20	Webb Hubbell	4-9500	wch
			Redacted		
✓	12:08	1:10	Larry Potts	324-4260	
			Redacted		
✓	2:25	12:10	Paula Casey (AUSA)		
✓			AUSA Fletcher (AUSA) Michael Jackson	501-324-5457 1 pm. time	wch / Little Rock P.B.
✓	12:55	2:25 12:35	Paula Casey	210-227-4392	Fed Practices Sem / San Antonio
✓	1:08	2:13	Fred Verinder	324-4805	Copy of communication submitted over to today in afternoon re Arkansas matter. (wch)
			Redacted		
✓	2:15		Tom Cubie	324-5590	(He called McDowell)
			Redacted		
✓	3:05		Webb Hubbell		
			Redacted		
✓	3:31		Fred Verinder	324-4805	
			Redacted		



Date Mon. Sept. 20, 1993

Completed	Time		To/From	Phone No.	Message
	In	Out			
✓	9:30	12:30	Webb Hubbell	4-9500	webb
			Redacted		
✓	12:08	11:10	Larry Potts	324-4260	
			Redacted		
✓	9:25	12:10	Paula Casey (AUSA)		
✓			AUSA Fletcher / AUSA Michael Jackson	501-324-5451 pm. line	web / Little Rock A.B.
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✓	3:05		Webb Hubbell		
			Redacted		
✓	3:31		Fred Verinder	324-4805	
			Redacted		

AUSA Fletcher Jackson
Rose Card from - ~~representative~~ (Hon. Hallbell)

Myrica sibirica

3-43

Henry Pate

~~Ben. Pate~~
Lund Johnson, May 1 - call from

Page 1

Unprinted

K. Lin

Richard C Johnson

Found 1 hole -

Redacted

④ ² ~~Letter~~ of Correspondence

Letter.

Hotel

210 - 227

245 - 2nd rd

General Practice

Wells Hill:

Redacted

2 3 nights in a row inside A.C. v office

John Vander

Mr. John Johnson

C. C. 1-7-20

To ALICE
 Date 11/6/17 Time 1:15
WHILE YOU WERE OUT
 M John
 of 200
 Phone 1-2-200
 Area Code Number Extension

TELEPHONED	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	WILL CALL AGAIN	<input checked="" type="checkbox"/>
WANTS TO SEE YOU	URGENT	<input checked="" type="checkbox"/>

 RETURNED YOUR CALL ☐
 Message Will be in
Hotel 12-15 then is
going to a luncheon
 Operator 11/17
 AMPAD EFFICIENCY 23-021 CARBONLESS

To ALICE
 Date 11/6/17 Time 1:15
WHILE YOU WERE OUT
 M John
 of 200
 Phone 1-2-200
 Area Code Number Extension

TELEPHONED	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	WILL CALL AGAIN	<input checked="" type="checkbox"/>
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 RETURNED YOUR CALL ☐
 Message Will be in
Hotel 12-15 then is
going to a luncheon
 Operator 11/17
 AMPAD EFFICIENCY 23-021 CARBONLESS

To Judge
 Date 11/6/17 Time 6:30
WHILE YOU WERE OUT
 M Mrs Keeney
 of 4-2001
 Phone 4-2001
 Area Code Number Extension

TELEPHONED	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	WILL CALL AGAIN	<input checked="" type="checkbox"/>
WANTS TO SEE YOU	URGENT	<input checked="" type="checkbox"/>

 RETURNED YOUR CALL ☒
 Message Will be in
Hotel 12-15 then is
going to a luncheon
 Operator 11/17
 AMPAD EFFICIENCY 23-021 CARBONLESS

To Judge
 Date 11/6/17 Time 6:30
WHILE YOU WERE OUT
 M Mrs Keeney
 of 4-2001
 Phone 4-2001
 Area Code Number Extension

TELEPHONED	PLEASE CALL	<input checked="" type="checkbox"/>
CALLED TO SEE YOU	WILL CALL AGAIN	<input checked="" type="checkbox"/>
WANTS TO SEE YOU	URGENT	<input checked="" type="checkbox"/>

 RETURNED YOUR CALL ☒
 Message Will be in
Hotel 12-15 then is
going to a luncheon
 Operator 11/17
 SWC 000718 23-021 CARBONLESS
 GRO 000718

-7-95

Walt H. Hill

Pro Force House

P.R. - Tiger

OPR

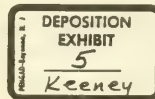
(1) FF

(2) Health Care - 252

(3) MLK - James Earl Ray - conspiracy?

Walt H. Hill

O.K. Keep him up to date on my developments



7-75

48 Hill

Pro/Force Home

Pba - Tiger

O.P.R.

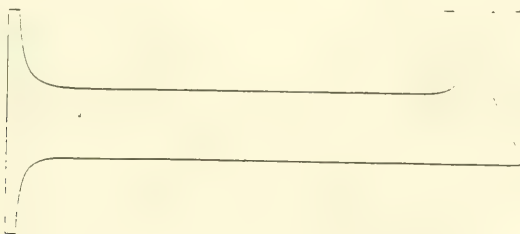
(1) FF

(2) Hiller Coe - 2/22

(3) MLK - James Earl Ray - conspiracy?

~~FF~~48 Hill

⊗ Keep her up to date on my developments



To: Judge
 Date: 10/19 Time: 1:25

WHILE YOU WERE OUT

M: Shila Anthony
 of _____
 Phone: A-2141

Area Code	Number	Extension
TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL
CALLED TO SEE YOU	<input checked="" type="checkbox"/>	WILL CALL AGAIN
WANTS TO SEE YOU	<input checked="" type="checkbox"/>	URGENT

RETURNED YOUR CALL ☐

Message: There are getting calls that this has been an announcement re Bill's position. Pls. call Mr. T. it has been done & will be done to day.

Operator: Jalpa

AMPAD EFFICIENCY 23-021 CARBONLESS

To: Judge
 Date: 10/18 Time: 1:40

WHILE YOU WERE OUT

M: Shila Anthony
 of _____
 Phone: _____

Area Code	Number	Extension
TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL
CALLED TO SEE YOU	<input checked="" type="checkbox"/>	WILL CALL AGAIN
WANTS TO SEE YOU	<input checked="" type="checkbox"/>	URGENT

RETURNED YOUR CALL ☐

Message: Will be leaving in 30 minutes if you would like a ride.

Operator: Jalpa

AMPAD EFFICIENCY 23-021 CARBONLESS

To: Judge
 Date: 10/19 Time: 9:45

WHILE YOU WERE OUT

M: Jack Kennedy
 of _____
 Phone: 4-2621

Area Code	Number	Extension
TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL
CALLED TO SEE YOU	<input checked="" type="checkbox"/>	WILL CALL AGAIN
WANTS TO SEE YOU	<input checked="" type="checkbox"/>	URGENT

RETURNED YOUR CALL ☒

Message: _____

Operator: Jalpa

AMPAD EFFICIENCY 23-021 CARBONLESS

To: Judge
 Date: 10/19 Time: 9-

WHILE YOU WERE OUT

M: Wm. R. Ruff
 of _____
 Phone: 4-2201

Area Code	Number	Extension
TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL
CALLED TO SEE YOU	<input checked="" type="checkbox"/>	WILL CALL AGAIN
WANTS TO SEE YOU	<input checked="" type="checkbox"/>	URGENT

RETURNED YOUR CALL ☐

Message: _____

Operator: Jalpa

AMPAD EFFICIENCY 23-021 CARBONLESS

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GRO 000571



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ISBN 0-16-055265-6



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